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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO,

Petitioner,

vs.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego, and

JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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QUESTION PRESENTED

Whether the California Supreme Court's decision implementing Proposition 13, grounded on neither fact, logic nor precedent and providing for a result directly contrary to what the California electorate was officially informed would be the result if Proposition 13 were adopted, constituted a judicial usurpation of the taxing power violative of Article IV, Section 4 of the United States Constitution.

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OPINIONS BELOW

The opinion of the California Supreme Court (Appendix A, *infra)* is reported at 27 Cal.3d 855, 167 Cal.Rptr. 820, 616 P.2d 802. The order denying the Board's petition for rehearing (Appendix G, *infra*) is not reported. The opinion of the state intermediate appellate court, (Appendix C, *infra*) and as modified, (Appendix D, *infra*) is not reported. The judgment of the state trial court (Appendix E, *infra*) and its opinion (Appendix F, *infra*) are not reported.

JURISDICTION

The opinion of the California Supreme Court was filed on August 14, 1980. The Board filed a timely petition for rehearing before the California Supreme Court on August 29, 1980. That court's order denying the Board's petition for rehearing was entered on September 17, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 4 of the United States Constitution provides in pertinent part:

> "The United States shall guarantee to every State in this Union a Republican Form of Government . . ."

California Constitution Article XIII A (Appendix I, *infra*).

California Constitution Article XIII, Section 2 (Appendix K, *infra*).

California Constitution Article XIII, Section 12 (Appendix L, *infra*).

California Revenue and Taxation Code, Section 2237 (Appendix J, *infra*).

STATEMENT OF THE CASE

The Factual Background

On June 6, 1978, the voters of the State of California overwhelmingly adopted an initiative tax measure adding Article XIII A (Appendix I, *infra*) to the California Constitution. Designated on the ballot as Proposition 13, the purpose of the initiative was to provide immediate tax relief to Californians by establishing a valuation limitation for real property and a maximum property tax rate of one percent (1%) of the property's full cash value, plus an amount of debt service on indebtedness previously approved by the voters. The one percent tax rate limitation of Article XIII A was expressly made applicable to the 1978-79 fiscal year.

Prior to the June 6, 1978 election, Proposition 13 underwent considerable scrutiny from many quarters, and consequently the likely fiscal impact of Proposition 13 received considerable media coverage. In addition, state officials and state agencies charged with implementing the state's property tax laws paid particular attention to the extent and impact of Proposition 13. Most legally significant of the pre-election studies was a 247 page interpretation of Proposition 13 by the California Legislative Analyst in connection with the preparation of the California Voters Pamphlet. The California Voters Pamphlet is an official analysis of the issues presented to the voters in the election, and is distributed to all registered voters in the state.[1] The 1980 primary election voters pamphlet informed the electorate that the one percent tax rate limitation of Proposition 13 would apply to all types of taxable property on the 1978-79 assessment rolls. Accordingly, the legislative analyst determined the expected revenue loss from Proposition 13 at $7 billion yearly, calculated on the basis of the one percent rate applied to the entire 1978-79 roll. It was with this information and understanding that the California voters adopted Article XIII A as an amendment to the California Constitution on June 6, 1978.

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[1] California Elections Code, Section 3578.

Shortly after the adoption of Proposition 13, the legislature adopted implementing legislation for Proposition 13, and in this legislation the one percent tax rate limitation of Proposition 13 was specifically applied to all property on the 1978-79 unsecured roll (Appendix J, *infra*). Thereafter, a conflict arose between the petitioner, Board of Supervisors and the respondents, County Auditor Lonergan and County Tax Collector Jones, over the applicability of the one percent tax rate limitation of Article XIII A to the unsecured portion of the 1978-79 assessment roll.

Under the laws of the State of California, the assessors of each county have a duty to prepare an assessment roll consisting of all taxable property within the county. This roll is then divided into two subclassifications, the "secured roll" consisting of property the assessment on which can be made a lien on real property, and the "unsecured roll" being the remainder of the assessed county taxable property not secured by realty. On July 26, 1978, the respondent, Auditor Lonergan, advised the Board that he intended to apply a tax rate to the San Diego County 1978-79 unsecured roll in excess of the maximum one percent rate limitation of the new constitutional amendment, and the recently adopted legislation. (CT 32)[2]. Respondent Lonergan pointed out that the public agencies in San Diego County would enjoy an additional 17 million dollars ($17,000,000) in tax revenues by virtue of his refusal to apply a one percent rate to the San Diego County 1978-79 unsecured roll.[3] He explained his position by pointing out what he characterized as a conflict between newly enacted Article XIII A and existing Article 13, Section 12(a) (Appendix L, *infra*). Section 12(a), originally enacted as Section 9a in 1924, provides that the preceding fiscal year's secured tax rate must be applied to the current fiscal year's unsecured assessment roll.

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[2] "CT" references are to the clerk's transcript filed in the California Supreme Court.

[3] The 17 million dollar figure calculated by Auditor Lonergan is the amount of unsecured property tax revenues in issue in San Diego County alone. The state-wide unsecured property taxes in issue exceed six hundred million dollars ($600,000,000).

Before the enactment of this constitutional carry-over rate provision, state law required property taxes on unsecured property to be billed and collected in March, long before the tax rate for that fiscal year was determined. Accordingly, the predecessor of Section 12(a) (i.e., the constitutional carry-over rate provision) was adopted to establish a method of fixing the rate on the unsecured roll, thus eliminating the administrative inconvenience of constant collection of deficiencies or issuance of refunds of unsecured property taxes (See *e.g.*, the discussion of the California Supreme Court on pages A-12 thru A-14, Appendix A, analyzing *Abrams v. San Francisco,* and tracing the history and development of Section 12(a)).[4] Hence, it was essentially the respondent's position that, with respect to the 1978-79 unsecured roll, Proposition 13 should be disregarded in order to give literal effect to the language of Section 12(a). The Board, on the other hand, asserted that the two apparently conflicting constitutional provisions could and should be read, along with the other provisions of Proposition 13, as a harmonious whole. The Board took this position in light of the purpose and intent behind the two respective enactments, and settled rules of constitutional construction. Notwithstanding the fact that the interpretation of the Board was also supported by the formal opinions of the State Controller, Board of Equalization and Attorney General, the respondents refused to bill and collect the taxes on the 1978-79 unsecured roll according to the mandate of Proposition 13.

The Proceedings in the Courts Below

It is the statutory duty of the Board to supervise the conduct of the County Auditor and County Tax Collector.[5] In August 1978, pursuant to its supervisorial duties, the Board

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[4] The *Abrams* holding was further clarified in *Delaney v. Lowery* (1944) 25 Cal.2d 561, where the supreme court held that the . . . "chief result to be achieved [by the application of Section 9a] . . . was the elimination of administrative difficulties in collecting the taxes rather than that the previous year's rate should be applied". *Id* at 572.

[5] California Government Code, Section 25303.

filed a complaint for declaratory relief and injunction and petition for writ of mandate compelling the respondents to compute and collect taxes in compliance with the rate limitations of Proposition 13 (CT 1-16). On September 13, 1978, San Diego County Superior Court entered its judgment granting the Board declaratory relief. (Appendix E, *infra*).[6]

In response to the decision of the superior court the respondents Lonergan and Jones appealed to the State of California Court of Appeal for the Fourth Appellate District. The strongly worded unanimous decision of the appellate court on January 8, 1980, in support of the Board's position echoed the reasoning of the superior court. (Appendix C, *infra*). When a little more than two weeks after the appellate decision in this case another state appellate court unanimously affirmed a Los Angeles Superior Court decision that the one percent maximum tax rate limitation of Proposition 13 applied to the 1978-79 unsecured roll, there seemed no doubt that the one percent rate limitation of Proposition 13 would apply to all property on the 1978-79 unsecured roll. For at this point, the California Legislative Analysts and thus the official state voters pamphlet had so advised the voters of this result prior to the adoption of Proposition 13, the California Attorney General, the State Board of Equalization, and the Controller had so officially opined immediately after the adoption of Proposition 13, the legislature had enacted property tax laws immediately

[6] The Board at this time was not alone in its search for a definitive word on the parameters of Proposition 13. The California Supreme Court was also in the process of reviewing Article XIII A in light of multiple challenges to its constitutionality. *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 *Cal. 3d 208.* The charges brought by the petitioners in *Amador Valley,* among others, were that the enactment violated the federal equal protection clause, impaired the constitutional right to travel, violated the impairment of contract clause and was void for vagueness, being incapable of precise definition. The California Supreme Court dismissed these charges handily, upholding the constitutionality of Article XIII A on all grounds. In explaining its holding the court asserted the requirement that Article XIII A be given a "practical" rather than "super technical" interpretation, ruling that a practical, common sense construction must be used in order to fulfill the apparent intent of the framers. *Id.* at 245.

after the adoption of Proposition 13 which independently mandated this result, and finally the eight members of the California judiciary who had examined this question had so unanimously opined.

In spite of the absolute lack of support for his position, respondent Lonergan appealed the appellate court decision to the California Supreme Court. On August 14, 1980, that court, in an unexpected and surprising move, reversed the decision below and ruled that Proposition 13 "when adopted, was not intended to apply to the 1978-1979 unsecured roll" (Appendix A, *infra,* at A-2).

The California Supreme Court rested its opinion in this case on four factual findings. The first three findings relate to the claimed inability of the court to ascertain any indication of voter intent from the ballot pamphlet. The last factual finding conveys the determination that Proposition 13 was not ambiguous, hence the court saw no need to resort to constitutional construction in its interpretation or application of the amendment.

The Board, in response to the surprising reversal by the California Supreme Court, filed a timely petition for rehearing (Appendix H, *infra*). In its petition, the Board asserted a claim under Article IV, Section 4 of the United States Constitution, and the Board also asserted that the decision constituted a denial of due process and the equal protection of law guaranteed by the Fourteenth Amendment. In this petition the Board expressed astonishment at the opinion rendered by the California Supreme Court and requested a rehearing to address the federal constitutional issues raised by that court's interpretation of Proposition 13. The California Supreme Court summarily denied the petition September 17, 1980 (Appendix G, *infra*).

Federal Question Timely Raised

It is a fundamental jurisdictional rule that federal questions be duly raised in the state court at the earliest possible opportunity. This usually means that the question must be

asserted at the trial court or intermediate appellate court level, but no later. There is an exception, however, in situations where the decision of the state supreme court is so unexpected that the litigant cannot fairly be charged with an ability to anticipate the ruling. *Missouri v. Gehner,* 281 U.S. 313 (1930); *Brinkerhoff-Faris Trust & Savings Co. v. Hill,* 281 U.S. 673 (1930).

In this case the federal questions were raised on petition for rehearing before the California Supreme Court. (Appendix H, *infra*). The Board's inability to anticipate the decision of the California Supreme Court stems primarily from two factors, the first being the above described consistent uniformity of judicial decision, legislative action, and administrative interpretations supporting the Board's position in this matter, and the second being the decision of the California court itself in *Amador Valley, supra,* note 6.

The *Amador Valley* decision also lulled the Board into believing that a realistic and rational interpretation would be applied to Proposition 13. The court's summary, and indeed the constructional thrust of its opinion, was that "(m)any, perhaps most of the uncertainties . . . may disappear if a reasonable, common sense approach is used in the interpretation of Article XIII A, and if appropriate weight is given to the contemporaneous construction of the legislative and administrative bodies charged with its enforcement in accordance with well established legal precedent." 22 Cal.3d at 248. In light of such a statement the Board cannot reasonably be charged with an ability to anticipate that the court would disregard its carefully articulated rules of construction and ascribe a meaning to Article XIII A which clearly violates the Federal Constitution. Thus the federal question raised under Article 4, Section 4 of the United States Constitution did not exist until the California Supreme Court issued its opinion in this case and evidenced therein an arrogant disregard for the mandate of the California electorate.

REASONS FOR GRANTING THE WRIT

The facts presented by this case raise the issue of the proper function of Article IV, Section 4 of the United States Constitution and its viability as a guaranty against abusive state governance. Article IV, Section 4 provides, in pertinent part, that "The United States shall guarantee to every State in this Union a Republican Form of Government. . ." Thus, the critical question submitted for determination by this Court is whether the California Supreme Court, in contradicting the clear constitutional mandate of the electorate, denied the State of California a republican form of government. The issue, as it is presented here, is believed to be one of first impression in this Court. The issue raised, however, has long been the subject of speculation by our great statesmen, and also provided the impetus for the adoption of the Guarantee Clause.

> "It may possibly be asked what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event would be a harmless superfluity only in the Constitution. *But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders,* or by the intrigues and influence of foreign powers?" (Emphasis added). The Federalist No. 43, at 275 (C. Rossiter ed. 1961) (J. Madison).

The trend of the California Supreme Court to "reinterpret" simple and clear statutory or constitutional provisions such that those provisions mandate a result directly contrary to that intended by the legislature or the citizens of California must be curtailed. At this point it appears to some that so long as there is no substantial federal question present the California Supreme Court has the naked power to interpret a legislative black to be white, without any limitation. The Board, however,

believes for the reasons set forth below, that the California Supreme Court must operate within the confines of a "Republican Form of Government".

1. The Sparse History of Article IV, Section 4.

By its terms, Article IV, Section 4 vests in the federal government the power to prevent or curb conditions occurring within the states which might endanger the republican form of government. This grant of supervisory power over the states is unique in that it is the only such authority conveyed by the Constitution to the federal government. As such, the Guarantee Clause endows the federal branch with great power to be used to preserve republican government. The republican form of government itself has been defined as being "a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior."[7] James Madison also noted specifically that the right of suffrage was "one of the fundamental articles of republican Government."[8] Thus, republican government is a government where representatives of the people carry forth the will of the majority as expressed through popular vote.

> "By the Constitution, a republican form of government is guaranteed to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves. . ." *In re Duncan,* 139 U.S. 449, 461 (1891).

The obligation to enforce the guaranty of Article IV, Section 4 falls upon the "United States" rather than upon any particular branch. That the duty goes to the United States in its corporate name, and that the guaranty is found in Article IV

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[7] The Federalist No. 39, at 241 (C. Rossiter ed. 1969) (J. Madison).

[8] 2 FARRAND, *The Records of the Federal Convention* 203, 250 (1911).

rather than the three preceding articles which spell out the individual duties of the respective branches, both explicitly and by implication suggests that each branch, in its own way, shares the obligation of insuring the states a republican form of government.

Notwithstanding the seemingly broadbased covenant of the Guarantee Clause, it has been the general historical rule of this Court to decline to decide issues raised under Article IV, Section 4 of the Federal Constitution. This position, first definitively articulated in *Luther v. Borden,* 48 U.S. (7 How.) 1 (1849), is based on a finding that cases which raise the Guarantee Clause are political in nature hence beyond the competence of the judiciary to decide. "Under . . . [U.S. Const. Art. IV, Section 4] it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not." *Id.* at 42. Since the *Luther* opinion, this expansive dicta has been heavily relied upon as authority that the enforcement of individual rights under the Guarantee Clause is necessarily a legislative function from which the federal judiciary is barred. Indeed, until the 1962 case of *Baker v. Carr,* 369 U.S. 186 (1962) the courts seemed to stand solidly behind *Luther.* It was in *Baker v. Carr,* and subsequently *Reynolds v. Sims,* 377 U.S. 533 (1964) that the majorities drew away from the strict *Luther* prohibition and recognized that it is the nature of the issues which may cause a Guarantee Clause controversy to present a non-justiciable political question, not the mere invocation of the clause itself.

That there is undoubtedly a sphere of policy determination which is political in nature and which the court has prudentially placed outside its scope of review is unchallenged here in necessity or wisdom. The political question doctrine is thus invoked to avoid passing on the merits of a question which is beyond the court's power to review. Article IV, Section 4 however, is a portion of the Constitution that is expressly within

the power of the judicial branch to review and which may present issues which, as here, require that the burden of upholding the guaranty fall squarely on the shoulders of this Court.

In *Baker v. Carr,* a state apportionment statute case, Justice Brennan for the majority took a rather uncharacteristic step away from the Court's traditional bare recitation of the *Luther* holding. Although *Baker* was decided on the basis of the Fourteenth Amendment equal protection clause, the Court spent a good deal of time discussing the applicability and justiciability of Article IV, Section 4. Seeking to define the elements of a political question the court held:

> "Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government. . ." 369 U.S. at 217.

Thus the finding of a political question necessarily involves the determination that one of these elements of nonjusticiability is present. Correspondingly, a Guarantee Clause case need not present a justiciability problem unless it is tainted by a fatal "political" element. The Court then went on to note that "This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guarantee Clause." The promise of this statement, however, was somewhat dampened by the insistence that "Of course, as we have seen, any reliance on that clause would be futile", this latter incongruous sentence being a reference to the holdings of *Luther* and its progeny.

The somewhat confusing majority opinion on the justiciability of the Guarantee Clause in *Baker* was followed by a concurring opinion by Justice Douglas and a dissenting

opinion by Justice Frankfurter, both of whom agree on the very point which the majority did not clearly express. "The statements in *Luther v. Borden* . . . that this guaranty is enforceable only by Congress or the Chief Executive is not maintainable . . . the abdication of all judicial functions respecting [any issue arising under the guaranty] . . . is indefensible."[9] Justice Douglas further posed a question which has uncanny relevance to the issues presented in this case. "Today would this court hold nonjusticiable or 'political' a suit to enjoin a Governor who, like Fidel Castro, takes everything into his own hands and suspends all election laws?" 369 U.S. at 247, note 3. The question asked by the petitioner here is analogous. Today would this court hold nonjusticiable a Guarantee Clause issue created by a state supreme court's decision to defy the mandate of the electorate and apply a newly enacted constitutional amendment directly contrary to the directive of the voters?

The *Baker* decision and *Reynolds* after it signal the rebirth of Article IV, Section 4 as a viable source of protection against abusive state governance. Numerous lower federal courts have spoken to the issue in the period since *Baker*, with the trend showing a willingness to consider Guarantee Clause questions on the merits.[10] No true resolution of this question will take place, however, in the absence of a decision by this Court.

This case presents an Article IV, Section 4 question in its pure form. Unlike *Baker*, there is no attempt to assert the applicability of the Fourteenth Amendment to the facts presented here, although an arguable claim could certainly be articulated under the equal protection clause. Rather, the petitioners feel that the sole focus of this review must be upon

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[9] 369 U.S. at 242, note 2. See also J. Frankfurter (dissenting) *Id.* at 297.

[10] See *Kohler v. Tugwell*, 292 F.Supp. 978 (1968) (majority concurring opinion of Justice Wisdom) *Aff'd.* 369 U.S. 531 (1969); *Byrd v. City of San Antonio*, 587 F.2d 184 (1979); *Montgomery County, Md. v. Califano*, 449 F.Supp. 1230 (1978); *Mountain States Legal Foundation v. Denver School District*, 459 F.Supp. 357 (1978); See also *Brown v. Environmental Protection Agency*, 521 F.2d 827 (1975).

the excesses of the judicial branch of state government as they endanger the republican form of government itself. Certainly there could be no more straightforward and fitting application for the Guarantee Clause than to protect a state's citizenry from the type of judicial denegation of its vote and blatant counter-legislation which occurred here. The facts of this case present the pristine example of runaway and abusive state government to which Article IV, Section 4 must apply.

2. The Decision of the California Supreme Court Below Runs Counter to Fact, Logic and Precedent.

This case is but another in a growing line of recent judicial decisions from a controversial court which are evoking the concern of the citizens of the State of California. The record in this case, as in others, seems to indicate that the California Supreme Court has a dangerously distorted image of itself as a mini-legislature and worse yet, a legislative body that is not constrained by reason nor bound by the mere acts of the California legislature nor the California electorate. The truth of this rather shocking inference is reinforced by an analysis of the supreme court's decision in this case, a decision based neither on logic, precedent, nor fact.

A. The opinion rendered by the California Supreme Court in this case is logically inconsistent and is ignorant of basic rules of tax legislation and constitutional construction. As explained above, Article XIII A limits the tax rate on real property to one percent of the full cash value. Real property in California, however, may appear on either the secured or the unsecured roll, the distinction being made on the basis of underlying security for the assessment lien. Correspondingly, personal property may also appear either on the secured or unsecured roll, its presence on the secured roll being allowed when the personalty is secured or cross-secured by real property (Appendix A, *infra,* at A-4). The formulation of the mandate of Proposition 13 handed down by the California Supreme Court in this case, however, allows all property on the 1978-79 secured roll, real as well as personal, to be taxed at the one

percent rate, whereas both real property and personal property on the 1978-79 unsecured roll must be taxed by the higher 1977-78 secured rate. Not only does this result deny the real property on the 1978-79 unsecured roll its clearly mandated one percent rate, but this result also provides that personal property on the 1978-79 unsecured roll will be subject to a higher tax rate than property on the 1978-79 secured roll and thus runs afoul of Article XIII, Section 2 of the California Constitution which states "the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (Appendix K, *infra*).

Notwithstanding the jumble of conflicting provisions created by this reading of Article XIII A, the court held that there was no ambiguity to be found in the amendment nor, apparently, in its application. Thus, settled rules of constitutional construction were ignored. Rather than reading the totality of Article XIII and Article XIII A of the California Constitution as a harmonious whole, giving due respect to the purpose of each section and the intent behind its enactment, the California court would have each section read as a disjointed and conflicting collection of rules. The court's opinion advocates adhering strictly to the wording of Section 12, while at the same time totally disregarding the prohibition of Section 2, and attaching a wholly unacceptable construction to Article XIII A.

In addition to the requirement that the constitution be read as a consistent and harmonious instrument, there is a further rule of construction which has particular bearing in this case. The power to tax is an attribute of state sovereignty which is exercised through the legislative branch of the government. Correspondingly, the courts must afford due deference to taxing statutes and determinations of the legislature. "(I)n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have . . ." *Madden v. Kentucky,* 309 U.S. 83, 88 (1940). The courts are further admonished that any taxing statute of doubtful intent must be construed favorably to the

taxpayer. *McFeeley v. Commissioner of Internal Revenue,* 296 U.S. 102 (1935). Rather than applying either of these rules, the California Supreme Court chose to issue a decision which totally overruled a section of the California Revenue and Taxation Code (i.e., Section 2237, Appendix J, *infra*) without even mentioning the existence of the legislation.

Finally, the California court stated that "our task is simply to decide the continued vitality of a system of taxation that has been in effect for more than 50 years." (Appendix A, *infra,* at A-13, note 12). This statement indicates the courts failure to recognize that a change of circumstance, here the enactment of Article XIII A, does not necessarily compel an all or nothing decision such as the one made. Certainly where harmonious interpretation requires, and a common sense application allows, a previously existing statute will have force and effect, albeit reduced by an intervening enactment.

In determining that Article XIII A would only apply to part of the real estate on the 1978-79 assessment rolls, the California court did violence to the state constitution and correspondingly violated the clear mandate of the people of California. There can be no clearer expression of voter sentiment than when the people of a state take it upon themselves through the process of initiative to become personally, directly and vitally involved in an issue as basic as taxation. It is precisely this type of involvement that gave birth and impetus to Proposition 13. Not only was Proposition 13 adopted by an overwhelming margin, but there is good reason to believe that the voters fully understood the impact of their actions (Appendix C, *infra,* at C-5, and Appendix F, *infra,* at F-7). For example, in reviewing the constitutionality of Proposition 13, the California court in *Amador Valley* was called upon to explain how the risk of voter deception had been minimized in the passage of the initiative. The court held that:

> "We may take judicial notice of the fact that the advance publicity and public discussion of article XIII A and its predicted effects were massive. The measure received as

much public attention as any other ballot proposition in recent years. These circumstances would seem to dilute the risk of voter confusion or deception by reason of the inclusion of the four principal features of the article in one ballot proposition. Moreover, the official voters pamphlet mailed to all registered voters contained an elaborate and detailed explanation of the various elements of Proposition 13." *Amador Valley, supra,* at 231.

It is the Board's position that the California Supreme Court has acted arbitrarily in blocking the tax rate limitation adopted by the California electorate in a constitutional amendment and in overruling a legislative enactment which provides for the same tax rate limitation.

B. Generally, the jurisdiction of this Court is not extended to review a finding of fact rendered by a state court. One of the exceptions to this rule exists "where a federal right has been denied as the result of a finding shown by the record to be without evidence to support it . . ." *Fiske v. Kansas,* 274 U.S. 380, 385 (1927); *Creswill v. Grand Lodge,* 225 U.S. 246, 261 (1912). Accordingly, a further compelling reason for granting certiorari is presented here. In deciding this case the California Supreme Court engaged in a surprising fact finding expedition which resulted in four asserted findings by the court contrary to the evidence presented at every stage of the case and the decisions on that evidence of the superior and intermediate appellate courts below.

In its first factual findings concerning the application of the one percent tax rate limit of Article XIII A to the unsecured roll, the state supreme court held "we simply cannot find any convincing evidence of voters' intent in the ballot pamphlet". (Appendix A, *infra,* at A-11). The asserted reasoning here is apparently that the pamphlet analysis was not couched in adequately technical taxation terms. "Chief among its deficiencies is the absence of any mention of taxable possessory interests" and, "(m)oreover it wholly fails to apprise the voters

of the concept of secured versus unsecured taxes". (Appendix A, *infra,* at A-10). The offending language to which the court refers is this passage from the voters pamphlet:

> "The total local property tax roll consists of county assessments on real property (land and buildings) [i.e., the property classifications that comprise the bulk of the secured roll] and personal property (inventories) [i.e., the property classifications that comprise the bulk of the unsecured roll] . . . Beginning with the 1978-79 fiscal year, this measure would limit the amount of property taxes that could be collected from an owner of county assessed real property [i.e., property on secured roll] to one percent of the property's full cash value. This measure does not mention county assessed personal property (such as business inventories) [i.e., property on the unsecured roll] . . . but the Legislative Council advises us that the one percent limit would apply to *all* types of taxable property [i.e., property on both the secured and unsecured rolls]. (Emphasis in original). (California Voters Pamphlet, Primary Election (June 6, 1978) p. 56), (Appendix H, *infra,* at H-8).

The failure to glean "any convincing evidence of voter intent" from this passage is indeed peculiar. It clearly states that "all types of taxable property" are the subject of the one percent limitation, and defines in layman's terms the two varieties of taxable property to which the rate limitation applies. The overly involved analysis engaged in by the court does everything to obscure the understanding of the voter and complicate a straightforward issue.

The court went on to make a second factual finding that the voter pamphlet passage set forth above could not even instruct voters who did understand unsecured assessments (Appendix A, *infra,* at A-10), the curious implication being that persons familiar with tax laws would not recognize "personal property (inventories)" as being the property which comprises the bulk of the unsecured roll.

In the further pursuit of voter intent the California court examined the due date for taxes on the unsecured roll. The court pointed out that the due date for taxes on the 1978-79 unsecured roll was March 1, 1978, a little more than three months prior to the June 6 primary. Armed with this information, the court made the determination that voters could therefore not have intended that the unsecured roll be billed in accordance with the mandate of Proposition 13 (Appendix A, *infra,* at A-10). The supreme court thus charges the voter with the knowledge of the intricacies of property tax law while at the same time the supreme court assumes that the voters are ignorant of the practical operation of those laws. In any event, although the due date for 1978-79 unsecured taxes was indeed March 1, 1978, the fact of the matter is that to common understanding the due date was the delinquency date, August 31, 1978. Thus, since the average taxpayer is not anxious to part with his money, hence not apt to pay his taxes until such time as the penalty might attach, the layman's "due date" is the last day before the penalty attaches, long after the June 6 primary.

Finally, the California Supreme Court ruled that there was no issue of ambiguity involved in the application of Proposition 13 to the 1978-79 unsecured roll, and thus it need not resort to rules of constitutional construction nor pay attention to extrinsic aids in construing the meaning and application of Article XIII A. The supreme court thus apparently would not even concede that it was at least ambiguous that Article XIII A apply to the 1978-79 unsecured roll in light of the Article XIII A mandate that "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property . . ." and the well briefed fact that there is real property as well as personal property on the unsecured roll. The supreme court also neglected to deal with California Constitution Article XIII, Section 2 providing that the tax rate on personal property shall not exceed the tax rate on real property, a provision which would certainly be violated by taxing the 1978-79 personal property on the unsecured roll by the higher 1977-78 secured rate.

3. The Appropriateness of the Requested Remedy

In this case the petitioner has made a substantial showing that an exertion of state power by the California Supreme Court has overridden rights secured by Article IV, Section 4 of the United States Constitution. The lack of respect for the electorate thus evidenced by the California court presents a potentially dangerous and divisive attitude toward the republican process which demands an authoritative response from this Court.

Furthermore, the Court is presented here with a case particularly appropriate to the application of the Guarantee Clause, lacking in the hallmarks of non-justiciability enunciated in *Baker v. Carr,* and presenting an issue cleanly and squarely based upon Article IV, Section 4 alone. This Court would simply compound the constitutional mischief of the California Supreme Court if it fails to find a justiciable question in the facts presented. More importantly, the consequence of such a holding would be that the citizens of California, and indeed the citizens of all other states would be possessed of a right under Article IV, Section 4, but be lacking in a corresponding remedy. Clearly the *Luther* formulation, leaving the correction of all problems under the Guarantee Clause to Congress, presents an inadequate solution here. Congress is possessed of neither the time nor the expertise to delve into the transgressions of the state judiciary. Rather, the nature of the judicial usurpation in this case is such that this Court is imminently and uniquely qualified to fashion a remedy through the exercise of its judicial supervisorial powers. Consequently, this Court should guide the California Supreme Court in the application of republican principles of government, and thereby insure that the people of the State of California are afforded the Constitutional birthright of every United States citizen.

If the unfortunate decision rendered here by the California Supreme Court were the product of a little respected court on an unimportant question, review of this case would not merit the attention of this Court. However, when, as here, it is the

California Supreme Court rendering a decision involving in excess of six hundred million dollars ($600,000,000) in disputed taxes, a grant of the writ is, it is respectfully submitted, plainly in order. This Court should accept jurisdiction if for no other reason than to quell the danger created by the errors below, and to give this issue the kind of treatment that a matter of such fundamental importance deserves.

CONCLUSION

The decision below represents a grave departure from the principles of a republican form of government guaranteed by Article IV, Section 4 of the United States Constitution. For this reason a writ of certiorari should issue to review the opinion and judgment of the Supreme Court of the State of California.

Respectfully submitted,

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Appendix A

Supreme Court
Filed August 14, 1980
Laurence P. Gill, Clerk

In the Supreme Court of the State of California

L.A. 31244
Super. Ct. No. 421865

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY,

Plaintiff and Respondent,

v.

GERALD J. LONERGAN, as Auditor and Controller, *etc.*,

Defendant and Appellant.

In Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208 (hereinafter *Amador*), we upheld the validity of article XIII A of the California Constitution against multiple constitutional challenges. Adopted in June 1978 as an initiative measure designated and popularly known as Proposition 13, article XIII A significantly altered the system of real property taxation in this state.

In considering the substantial attacks mounted against the measure, we restricted our inquiry to the "principal and fundamental challenges to the validity of article XIII A as a whole." (*Id.* at p. 219.) Thus we expressly acknowledged the enactment was not wholly free from uncertainties, but reserved judgment as to their proper resolution: " 'Analysis of the problems which may arise respecting the interpretation or application of particular provisions of the act should be deferred for future cases in which those provisions are more directly challenged.' [Citation.]" (*Ibid.*) We have before us

such a case, and the question presented is whether the real property tax rate and valuation limitations mandated by article XIII A are applicable to property taxed on the unsecured portion of the assessment roll for the tax year 1978-1979.

Shortly after Proposition 13 was adopted, the Board of Supervisors of San Diego County (board) filed this action seeking a writ of mandate and declaratory and injunctive relief against Gerald J. Lonergan, the San Diego County Auditor and Controller (auditor) and James E. Jones, the San Diego County Treasurer-Tax Collector (tax collector). Alleging that a genuine controversy existed as to whether taxes assessed on the unsecured roll are within the coverage of article XIII A, the board sought to compel the auditor and tax collector to compute, bill, and collect taxes in accordance with the limitations set forth in the new constitutional provision. The court issued declaratory relief and held that the auditor and tax collector were required to comply with article XIII A in taxing property on the unsecured roll.[1] The auditor appeals. As will appear, we conclude that Proposition 13, when adopted, was not intended to apply to the 1978-1979 unsecured roll. Accordingly, the judgment granting declaratory relief is reversed.

I

No factual issues are in dispute, as the question before us is essentially a matter of constitutional construction. We begin our analysis with a review of the fundamental concepts of California property tax law.

A

Unless otherwise provided by the state Constitution or federal law, all property in California is taxable "in proportion to its full value." (Cal. Const., art. XIII, § 1; Rev. & Tax.

[1] In light of this declaration, the court deemed it unnecessary to resolve the dispute as to whether it had jurisdiction to issue a writ of mandate or injunctive relief. The judgment granting declaratory relief therefore denied the petition for writ of mandate and request for injunctive relief.

Code, § 201.)[2] "Property" is defined comprehensively to include "all matters and things, real, personal, and mixed, capable of private ownership." (§ 103.) Real property, or real estate, is in turn defined to include: "(a) The possession of, claim to, ownership of, or right to the possession of land. [¶] (b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining there. [¶] (c) Improvements." (§ 104.) Personal property comprises the residue, i.e., all other property. (§ 106.)

Exemptions from taxation for real property are provided in article XIII. Additionally, the Legislature is empowered to exempt personal property by a vote of two-thirds of the membership of each house (art. XIII, § 2), and has done so in sections 202-233 of the Revenue and Taxation Code. The Legislature may classify personal property for differential taxation, but "the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (Art. XIII, § 2.)

The assessor of each county has a duty to prepare an assessment roll listing all taxable property within the county. (§ 601.) For this purpose all property is classified as either secured or unsecured: "The 'secured roll' is that part of the roll containing State assessed property and property the taxes on which are a lien on real property sufficient, in the opinion of the assessor, to secure payment of the taxes. The remainder of the roll is the 'unsecured roll.' " (§ 109; see § 134.)

Whether a tax on property is a lien against real property is determined by statute. Section 2187 provides that "Every tax on real property is a lien against the property assessed." Further, a tax on personal property may be secured or "cross

[2] Unless otherwise indicated, all constitutional references are to the California Constitution and all statutory references are to the Revenue and Taxation Code.

secured" by real property.[3] If either of these conditions exists, the personal property so secured will be assessed on the secured roll. All other personal property is assessed on the unsecured roll.

Although it is commonly assumed that "property on the unsecured roll consists almost exclusively of personal property" (McDougall v. County of Marin (1962) 208 Cal.App.2d 65, 71), possessory interests in land generally are assessed on the unsecured roll. Possessory interests are defined to include: "(a) Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person. [¶] (b) Taxable improvements on tax-exempt land." (§ 107.) As such, they fall within the definition of real property under section 104. Prior to the passage of Proposition 13, however, section 107 provided that possessory interests, with the exception of leasehold estates for the production of gas, petroleum, and other hydrocarbon substances, were deemed insufficient security for the payment of taxes and were assessed on the unsecured roll. (Stats. 1972, ch. 1308, § 1, p. 2608.)[4]

As a practical matter, possessory interests are separately taxed only when the underlying land is tax exempt: "In practice, assessors usually enter the entire value of land and

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[3] A tax on personal property is a lien against real property if the personal property belongs to the owner of the real property on which it is located and the fact of the lien is noted on the secured roll opposite the description of the real property. (§ 2189.) Similarly, personal property that does not belong to the owner of the real property on which it is located is a lien against other real property owned by the taxpayer and located in the same county, if the taxpayer obtains a certificate from the assessor and records it with the county recorder. (§ 2189.3) The latter personal property is deemed to be "cross secured."

[4] An exception was provided for Los Angeles County, in which the board of supervisors was authorized to place possessory interests on the secured roll. In August 1978, this discretionary authority was extended to certain other counties for the fiscal year 1978-79 only. (Stats. 1978, ch. 576, § 4.7, p. 2008.) Section 107 presently provides: "All possessory interests may, in the discretion of the county board of supervisors, be considered as sufficient security for the payment of any taxes levied thereon and may be placed on the secured roll." (Stats. 1979, ch. 4. § 1, p. 8.)

improvements on the tax roll without distinction between possessory and reversionary interest . . . . [Citation.] As between reversioners and possessors payment of the tax is a private arrangement. [Citations.] When, however, the possessory interest is taxable and the reversion is exempt, only the possessory interest is subject to assessment and taxation. [Citations.]" (De Luz Homes, Inc. v. County of San Diego (1955) 45 Cal.2d 546, 563.)[5]

In short, although the property tax system distinguishes between real and personal property, and also between secured and unsecured property, the two classification systems overlap. As a result, the secured and unsecured rolls each contain both real and personal property.

Taxes on property assessed on the secured roll are payable in two equal installments, due November 1 and February 1 of each year. (§§ 2605, 2606, 2701, 2701.)[6] The first installment comes delinquent on December 10 and the second installment

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[5] "Since almost half of the land area of California is in the [tax-exempt] public domain, possessory interests in such land constitute a significate revenue source." (Ehrman & Flavin, Taxing California Property (2d ed. 1979) § 3.6, p. 94.)

Examples of taxable possessory interests are set forth in the rules of the State Board of Equalization. (Cal. Admin. Code, tit. 18, § 28.) A more comprehensive listing includes: "1. Forest Service permits, residential and commercial, including ski lifts, resorts, stores and cabins. [¶] 2. Harbor leases, residential, commercial, and industrial. [¶] 3. Downtown auto parking leases. [¶] 4. Possession and use of residences owned by public agencies. [¶] 5. Employee housing on tax-exempt land. [¶] 6. Airport permits, including parking and garage leases. [¶] 7. Grazing land permits. [¶] 8. Indian land leases. [¶] 9. The right to cut and remove standing timber on public lands. [¶] 10. Gas, petroleum, or other hydrocarbon rights in public lands. [¶] 11. Unpatented mining claims. [¶] 12. The possession of public property at harbors, factories, airports, golf courses, marinas, recreation areas, parks, stadiums, and government facilities. [¶] 13. Possession and use of government-owned fixed equipment. [¶] 14. Air rights over public lands or freeways." (Ehrman & Flavin, *op. cit. supra,* at § 3.8, p. 101, citing Assessors' Handbook AH 517.)

[6] An alternative procedure for collection of property taxes on the secured roll in four equal installments is provided for Los Angeles County. (§ 2750 et seq.)

on April 10. (§§ 2617, 2618, 2704, 2705.) Taxes on the unsecured roll, however, are due March 1 preceding the fiscal year for which the taxes are levied (§§ 2901, 2192) and, if included in the assessment roll as of July 31, become delinquent on August 31 (§ 2922).

In addition to the differences in due dates and delinquency dates, one of the fundamental distinctions between secured and unsecured taxes lies in the fixing of the tax rate. The tax rate for the secured roll is established by the board of supervisors of each county on or before September 1 of each year. (Gov. Code, § 29100.) Taxes on unsecured property, however, are levied at the rate fixed for the secured roll in the prior tax year, pursuant to article XIII, section 12: "(a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment *shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.* [¶] (b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls." (Italics added.)[7]

B

Against this setting, Proposition 13 was adopted by the voters on June 6, 1978. As we observed in *Amador*, the initiative measure "changes the previous system of real property taxation and tax procedure by imposing important limitations upon the assessment and taxing powers of state and local governments." (22 Cal.3d at p. 218.) Two of the proposition's four principal elements are pertinent here.

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[7] Section 2905 implements the mandate of article XIII, section 12: "In collecting taxes on unsecured property the tax rate to be used is the rate for property of the same kind on the secured roll last fixed before the lien date for the taxes to be collected. . . ."

Section 1, subdivision (a), of article XIII A imposes a limitation on the tax rate applicable to real property: "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. . . ."[8]

Section 2, subdivision (a), imposes a limitation on the assessed value of real property, commonly referred to as the valuation "rollback" provision: "The full case value means the county assessor's valuation of real property as shown on the 1975-1976 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. . . ."

The tax rate and valuation limitations took effect for the tax year beginning July 1, 1978, pursuant to section 5 of article XIII A and the implementing legislation subsequently adopted. (See Stats. 1978, chs. 292, 332, 353, 576; also see Stats. 1979, ch. 242.) The issue now before us is whether these limitations apply to both real and personal property on the unsecured roll for the tax year 1978-1979. The controversy is rooted in the previously discussed and apparently conflicting requirements that the tax on personal property shall not be higher than that on real property (art XIII, § 2) and that the unsecured roll be taxed at the prior year's secured rate (art. XIII, § 12).

In this appeal, the auditor contends that article XIII, section 12, was not repealed by the adoption of article XIII A; hence the 1978-1979 unsecured roll must be taxed at the previous year's secured rate, and the 1 percent limitation cannot be applied to the unsecured roll until the 1979-1980 tax year. In rebuttal, the board offers the following syllogism: article XIII A establishes a rate limitation for real property for the 1978-1979 tax year; the unsecured roll contains real property; therefore the rate limitation applies to real property on the

[8] The 1 percent limitation is not applicable to ad valorem taxes or special assessments necessary to pay any indebtedness previously approved by the voters. (Art. XIII A, § 1 subd. (b).)

1978-1979 unsecured roll. Further, the tax on personal property cannot exceed the tax on real property; therefore the rate limitation also applies to personal property on the unsecured roll. As we shall explain, however, the board's reasoning is fundamentally flawed.

II

Relying on the time-honored principles of constitutional construction, both parties urge us to harmonize the provisions of article XIII, section 12, and article XIII A, section 1. In the alternative, they concur that if such harmonization is not possible, one provision must prevail over the other, Not surprisingly, however, they part company at this point: the auditor contends that article XIII, section 12, must prevail, whereas the board makes a similar argument in favor of article XIII A, section 1.

Before attempting to reconcile the two provisions, we must first determine whether they indeed clash with one another. Any apparent conflict rests on the assumption that the tax rate limitation established by article XIII A must be applied to the 1978-1979 unsecured tax roll.

We turn, then, to the language of the enactment, keeping in mind the familiar and basic tenet that constitutional provisions adopted by the people are to be interpreted so as to effectuate the voters' intent. (Kaiser v. Hopkins (1936) 6 Cal.2d 537, 538.) By its terms, article XIII A applies only to real property taxes. In *Amador* we upheld the constitutionality of the enactment and accorded it the liberal construction to which initiative measures are entitled. (22 Cal.3d at pp. 219, 248.) In so doing, throughout our opinion and in varying contexts we observed that the measure pertained to the subject of *real property* taxation and declared its underlying purpose and chief aim to be *real property* tax relief. (*Id.* at pp. 218, 220, 224, 230, 231, 243.)

As to the distinction entrenched in the property taxation system between secured and unsecured taxes, article XIII A is silent. The board contends it must be construed to apply to all real property, whether taxed on the secured or the unsecured roll; and since resolution of this issue is nowhere to be found in the express language of the measure, the board urges us to resort to extrinsic aids. Conceding as it must that none of them is conclusive, it nevertheless insists that when taken as a whole such aids indicate that the tax rate limitation of Proposition 13 was intended to, and therefore should, apply to the 1978-1979 unsecured roll.

First, the board refers us to the analysis by the Legislative Analyst contained in the ballot pamphlet in which the measure was submitted to the voters. (Ballot Pamp., Analysis by Legislative Analyst of Prop. 13 as presented to the voters, Gen. Elec. (June 6, 1978).) In an overview of property taxation in California, the analysis states: "The total local property tax roll consists of county assessments on real property (land and buildings) and personal property (inventories) . . . . " It then provides: "In several instances the exact meaning of language used in this measure is not clear. Where this occurs we have based our analysis on an opinion of the Legislative Counsel regarding the probable court interpretation of such language. . . . [¶] Beginning with the 1978-79 fiscal year, this measure would limit the amount of property taxes that could be collected from an owner of county assessed *real* property to 1 percent of the property's full cash value. This measure does not mention county assessed personal property (such as business inventories) . . . but the Legislative Counsel advises us that the 1 percent limit would apply to *all* types of taxable property." (Italics in original.) (*Id.* at p. 56.)

The board would have us read this language as proof that the voters must have understood that, if enacted, Proposition 13 would result in a tax rate limitation applicable to both the unsecured and the secured rolls for the 1978-1979 tax year. We do not agree. The quoted analysis gives overbroad and

inaccurate definitions of real and personal property. Chief among its deficiencies is the absence of any mention of taxable possessory interests. Moreover, it wholly fails to apprise the voters of the concept of secured versus unsecured taxes. Proposition 13 was widely publicized as a taxpayers' revolt providing tax relief for homeowners.[9] Accordingly, we deem it probable that those electors who were previously unaware of the existence of the unsecured tax roll were in no way enlightened by the ballot pamphlet, and therefore cast their votes without regard to any anticipated effect on unsecured taxes.

As to those voters who were knowledgable of unsecured property taxes, the absence of any discussion in the ballot pamphlet could well have led them to believe that such taxes were not embraced by Proposition 13. A factor potentially contributing to such an impression is the Legislative Analyst's incorrect definition of real property as "land and buildings," to the apparent exclusion of possessory interests. It is equally plausible that voters who knew unsecured property has for decades been taxed at the prior year's secured rate believed that the 1 percent limitation would apply to the unsecured roll in the following year. For such voters the phrase in the analysis, "*Beginning* with the 1978-79 fiscal year" (italics added), might have had especial import.

There is yet another factor bearing on the issue of voters' intent. As we previously explained, unsecured taxes for the fiscal year beginning July 1 are due the preceding March 1. Hence it could not have been within the voters' contemplation in casting their ballots on June 6, 1978, that Proposition 13, if adopted, would limit taxes due fully three months earlier. The board attempts to dismiss the significance of this fact by noting that March 1 is the *lien* date for both the secured and unsecured roll. (§ 2192.) In so doing, it blurs the distinction between the

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[9] See, e.g., Ehrman & Flavin, *op, cit. supra,* at section 2.1, page 28: "But the single most inflammatory factor [presaging the adoption of Proposition 13], the one that fanned the flames, was the dramatic increase in the burden of the property tax, particularly on California homeowners."

lien date and the due date: "The lien attaches on the first Monday of March regardless of the date the assessment is made; the later fixation of the amount of taxes by levy and assessment is but a step in the enforcement of the already established lien. [Citations.] When the amount is ascertained it relates back to the time the lien is fixed. [Citation.]." (City of Long Beach v. Aistrup (1958) 164 Cal.App.2d 41, 51-52.) Thus it is clear that on March 1, 1978, the taxes on the 1978-1979 unsecured roll were fixed and due, whereas the taxes on the secured roll remained to be assessed.[10]

In sum, we simply cannot find any convincing evidence of the voters' intent in the ballot pamphlet. We therefore decline to accept the board's characterization of the intent. More importantly, we are reluctant to rely on extrinsic aids to supply a provision that is wholly missing from the enactment. We have previously acknowledged that ballot pamphlets may constitute the only legislative history of an initiative measure adopted by the voters. (White v. Davis (1975) 13 Cal.3d 757, 775 & fn. 11.) As such, they may properly be resorted to as a construction aid to determine the "probably meaning of *uncertain* language." (*Amador,* 22 Cal.3d at p. 246, italics added; see

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[10] The auditor asserts that because unsecured taxes are due on March 1, the application of the 1 percent limitation to the 1978-79 unsecured roll would amount to an impermissible retroactive application of article XIII A. Specifically he contends the right to unsecured taxes vested in the taxing authorities on March 1, and to give article XIII A retrospective effect would therefore constitute a gift of public funds. (Texas Co. v. County of Los Angeles (1959) 52 Cal.2d 55, 66.)

The board responds that the constitutional proscription against gifts of public funds (art. XVI, § 6) applies only to the Legislature and thus cannot be violated by retroactive application of a voters' initiative measure. Moreover, it maintains the prohibition is not violated if the expenditure of public funds is for a public purpose. (Schettler v. County of Santa Clara (1977) 74 Cal.App.3d 990, 1003-1004.) *Schettler* is readily distinguishable, however, as the Legislature in that situation made an express finding that public policy would be served by the expenditure of public funds. (*Id.* at p. 1004.)

In any event we need not reach the issue since we hold in favor of the auditor on the alternate ground that article XIII A was not intended to apply to the 1978-79 unsecured roll.

also Carter v. Seaboard Finance Co. (1949) 33 Cal.2d 564, 580-581; Carter v. Com. on Qualifications, etc. (1939) 14 Cal.2d 179, 185.) Where language is clear and unambiguous, however, "there is no need for construction, and courts should not indulge in it." (Solbert v. Superior Court (1877) 19 Cal.3d 182, 198.)

Similarly, although contemporaneous constructions by the Legislature or by the administrative agencies responsible for implementation of a new enactment may be relied on to resolve ambiguities (*Amador*, 22 Cal.3d at p. 245), we resort to such extrinsic aids only when construction is necessary (State Board of Education v. Levit (1959) 52 Cal.2d 441, 462; Flood v. Riggs (1978) 80 Cal.App.3d 138, 152). Hence the opinions by the Attorney General and the State Board of Equalization relied upon by the board carry no significant weight.[11]

Instead, we agree with the auditor that principles of constitutional construction favor a different conclusion, i.e., that property on the 1978-1979 unsecured tax roll is to be taxed at the 1977-1978 secured rate. It is well settled that a constitutional amendment is to be construed in harmony with the existing framework of which it forms a part, so as to avoid a conflict. (Serrano v. Priest (1971) 5 Cal.3d 584, 596.)

In this regard, article XIII, section 12, is clear and unambiguous. Originally enacted in 1924 as article XIII, section 9a, it provided that taxes levies on personal property not secured by real estate were to be based on the tax rate applied to real property in the preceding tax year. The provision was upheld in Abrams v. San Francisco (1941) 48 Cal.App.2d 1. There a

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[11] In this regard we take judicial notice of the State Board of Equalization's letter to county assessors, dated March 29, 1978, stating that because of uncertainty as to the status of taxes on the 1978-79 unsecured roll the assessors might wish to consider waiting until after the June 6 election to issue the unsecured tax bills. The letter arguably demonstrates that the assessors were on notice of the potential impact on unsecured taxes if Proposition 13 became law; it has no effect on our reading of the intent of the voters in adopting the measure. Moreover, it has been represented to us that in some counties the unsecured tax bills were issued before June 6, 1978.

taxpayer sued to recover alleged excess taxes when pursuant to section 9a his personal property was taxed at the prior year's rate for real property, which happened to be higher than the current year's rate. The court explained that the purpose of the section was to alleviate the burden of adjusting the tax on unsecured property after it had been collected, through either a refund or a deficiency. This burden resulted from the fact that taxes on unsecured property were collected in March, well before the tax rate was fixed for the fiscal year beginning on July 1. " 'But § 9a does away with the necessity of collecting taxes in advance on a rate to be determined in the future. . . . [T]axes on personal property unsecured by real estate shall be levied and collected, at a rate fixed, once for all, and definitely and . . . such rate should be the tax rate for the preceding tax year.' " (*Id.* at p. 5.) In response to the contention that this provision was violative of equal protection, the court observed that taxpayers of different classes may be treated differently. (*Id.* at p. 7.) It then concluded: "There can be no doubt that there is a natural, intrinsic and constitutional difference between secured and unsecured taxes. (Rode v. Seibe (1898) 119 Cal. 518, 521.)" (*Id.* at pp. 7-8.)[12]

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[12] Asserting an equal protection claim in a communication presented after oral argument, the board attempts to distinguish *Abrams* by stressing the relatively small differential between the two rates for the year then in issue. As we have explained, however, the *Abrams* court rested its equal protection holding on the constitutional distinction between secured and unsecured taxes, not on the specific rates applied to the two rolls.

It is also contended that in *Abrams* the classification was upheld on the ground that it served the legitimate goal of administrative convenience, whereas here the sole purpose of disparate treatment is to tax the unsecured roll at a substantially higher rate than the secured roll. The attempted distinction mistakenly suggests we are reviewing a newly enacted classification. Our task is simply to decide the continued vitality of a system of taxation that has been in effect for more than 50 years.

Finally we note that the board, in its respondent's brief, expressly conceded the equal protection issue in light of our decision in *Amador*. There, upholding Proposition 13 against an equal protection challenge, we set forth the established principles of constitutional law that permit the states broad latitude and flexibility in enacting and enforcing tax laws. (22 Cal.3d at pp. 233-234.)

Article XIII, section 9a, was amended in 1936 to include not only unsecured personal property but also "assessments upon possession of, claim to, or right to the possession of land and upon taxable improvements located on land exempt from taxation." In Forster Shipbldg. Co. v. County of L.A. (1960) 54 Cal.2d 450, 456, we recognized that the 1936 amendment signified a change in the law in that "possessory interests in land are real property for purposes of taxation . . . . [and] were not within the purview of 'personal property' as used in the original provision."

Thus, as it presently reads, article XIII, section 12, clearly provides that taxes on unsecured property, both real and personal, are to be assessed at the prior year's rate for the secured roll.

If the board is to prevail in its contention that the 1 percent limitation applies to the 1978-1979 unsecured roll, it can only be because article XIII A has repealed article XIII, section 12.[13]

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[13] The board contends that it in fact seeks to harmonize the two provisions. The gist of its argument is that the tax rate provided by article XIII A has two components: the flat 1 percent limitation under section 1, subdivision (a); and an amount necessary to make annual debt service payments on general obligation bonds or other indebtedness pursuant to section 1, subdivision (b) (and see § 2237, subd. (a)). Since the latter amount will fluctuate from year to year, article XIII, section 12, can apply to this component of the tax rate under the new law.

As the auditor asserts, however, there is no authority, either statutory or constitutional, for the suggested bifurcation of the tax rate to be applied to the unsecured roll. Newly enacted section 2237.5 provides no assistance, unsecured tax roll, the county auditor may add to the 1 percent rate the rate levied on the prior year's secured tax roll for indebtedness approved by the voters prior to July 1, 1978, as described in subdivision (b) of Section 1 of Article XIII A of the California Constitution." (Stats. 1980, ch. 60, § 1, No. 3 West's Cal. Legis. Service, p. 229.) By its terms the statute has no application to the 1978-79 fiscal year. It merely makes explicit that beginning in 1979-1980 taxes on the unsecured roll, *including the component for debt service*, shall be computed at the prior year's secured tax rate.

In any event, since we conclude the board has not demonstrated the requisite voters' intent that article XIII A apply to the unsecured roll, we need not dwell upon this theory, although the board views it as dispositive. The statute reads: "For the 1979-80 fiscal year and thereafter, except as provided by sub-division (b) of Section 12 of Article XIII of the Constitution, for purposes of computing tax rates on the

This proposition is untenable for two reasons. As we previously concluded, nothing in article XIII A suggests it was intended to apply to unsecured taxes in the first year of its operation; obviously, then, it does not expressly repeal article XIII, section 12. And the law shuns repeals by implication, particularly where, as here, "the prior act has been generally understood and acted upon." (Penziner v. West American Finance Co. (1937) 10 Cal.2d 160, 176.)

So strong is the presumption against implied repeals that when a new enactment conflicts with an existing provision, "In order for the second law to repeal or supersede the first, the former must constitute a revision of the entire subject, so that the court may say that it was intended to be a substitute for the first." (*Ibid.*) On this point too, *Amador* is persuasive. In rejecting the contention that Proposition 13 amounted to a complete revision of rather than an amendment to the Constitution, and hence could not be accomplished by the initiative process, we deemed the measure to be a constitutional amendment rather than a revision. (22 Cal.3d at p. 229.) Thus we are bound to harmonize the two constitutional provisions: "Where a modification will suffice, a repeal will not be presumed." (*Penziner*, 10 Cal.2d at p. 176.)

For the reasons stated, article XIII A is inapplicable to property on the unsecured roll for the tax year 1978-1979.[14]

[14] Although the judgment explicitly states that both the tax rate and valuation limitations are applicable to the 1978-1979 unsecured roll, all parties have focused their arguments on the applicability of the 1 percent rate limitation. As we conclude that Proposition 13 in its entirety was not intended to apply to the 1978-1979 unsecured roll, we need not address the question of the valuation limitation separately.

The judgment is reversed.

MOSK, J.

WE CONCUR:

TOBRINER, J.

CLARK, J.

RICHARDSON, J.

MANUEL, J.

NEWMAN, J.

I concur in the judgment.

BIRD, C.J.

Appendix B

Filed October 17, 1980
J. Boyd, Deputy

In the Superior Court of the State of California in and for the County of San Diego

No. 421865

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY,
Petitioner and Plaintiff,
v.
GERALD J. LONERGAN, Auditor and Controller of the County of San Diego; and JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,
Respondents and Defendants.

A remittitur having been filed with the clerk of this court after the decision of the Supreme Court of the State of California, became final and such remittitur having directed this court to enter judgment for the Defendants.

IT IS ORDERED AND ADJUDGED:

1. That the judgment entered herein on September 13, 1978, in Judgment Book 1178 at page 95, is vacated and set aside.

2. That Plaintiff take nothing by its complaint against Defendants.

3. Defendants are legally required to compute, bill and collect property taxes on the unsecured roll for 1978-79, in accordance with Article XIII, Sections 1 and 12 of the California Constitution and their implementing legislation without regard to the tax rate and valuation limitations set forth in Article XIIIA, Sections 1 and 2 of the California Constitution and their implementing legislation.

4. Each party bears its own costs.

DATED: October 17, 1980

/s/ Jack R. Levitt
JACK R. LEVITT
Judge of the Superior Court

Appendix C

Filed January 8, 1980
Robert L. Ford, Clerk

In the Court of Appeal, Fourth Appellate District Division One State of California

4 Civ. No. 18580
Super. Ct. No. 421865

BOARD OF SUPERVISORS OF THE SAN DIEGO COUNTY,

Plaintiff and Respondent,

v.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego,

Defendant and Appellant,

JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,

Respondent and Defendant.

Donald L. Clark, County Counsel, Lloyd M. Harmon, Jr., Chief Deputy and Jack Limber, Deputy, for Defendant and Appellant.

O'Melveny & Myers and Bennett W. Priest and Frederick A. Richman for Plaintiff and Respondent.

Gray, Cary, Ames & Frye and Peter G. Aylward, William S. Boggs and Paul J. Dostart for Plaintiff and Respondent.

The Board of Supervisors of San Diego County (Board) brought this action seeking declaratory relief, an injunction and a writ of mandate, essentially asking for a determination of the

appropriate tax rate for the unsecured tax roll to be applied for the 1978-79 fiscal year after the voters amended the state Constitution with the well-publicized Proposition 13. Joined as parties defendant were Gerald J. Lonergan, San Diego County Auditor and Controller (Controller), and James E. Jones, San Diego County Treasurer and Tax Collector (Tax Collector). The action sought to restrain the Controller and Tax Collector from computing, billing, or collecting taxes on the unsecured tax rolls at a rate or an assessed value in excess of that authorized in California Constitution article III A, sections 1 and 2,[1] (Proposition 13) adopted by the voters on June 6, 1978. The trial court granted the relief prayed and the Controller appeals.

The sole issue in this case is whether Proposition 13 is applicable to property on the unsecured tax rolls for the tax year 1978-79. We hold Proposition 13 applies to such property and affirm the judgment.

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[1] "Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

"....

"Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term 'newly constructed' shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster.

"(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value."

Generally, taxable property in California is classified as either real or personal property (Rev. & Tax. Code, § 104, 106).[2] The property is then subclassified and placed on an assessment roll, either on the "secured roll" where the assessment can be made a lien on real property, or on the "unsecured roll" where the assessment is free from any security arrangement with realty (§ 109). This latter category normally includes possessory interests held by one not the holder of the fee, and improvements on exempt property or property owned by another. The due date of tax on property appearing on the secured roll differs from that on the unsecured tax roll. Tax on property listed on the secured tax roll is paid in two equal installments due November 1 and February 1 (§§ 2605 and 2606) and becomes delinquent if not paid before December 10 and April 10 of each year (§§ 2617 and 2618). Generally, tax on property listed on the unsecured roll is due March 1 preceding the fiscal years for which the taxes are levied and becomes delinquent August 31 (§§ 2901 and 2192).

Under the California Constitution, article XIII, sections 1 and 2, all property is required to be assessed at the same percentage of fair market value; and the tax per dollar of full value shall not be higher on personal property than on real property.[3] The board of supervisors of each county must adopt

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[2] Unless otherwise specified, all references are to the Revenue and Taxation Code.

[3] In their entirety, sections 1 and 2 of article XIII read:

"Sec. 1. Unless otherwide provided by this Constitution or the laws of the United States:

"(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value.

The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

"(b) All property so assessed shall be taxed in proportion to its full value.

"Sec. 2. The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness and any legal or equitable interest therein not exempt under any

(Footnote continued on following page)

its final budget and fix the tax rate for the secured tax roll on or before September 1 (Gov. Code, § 29100). In earlier years, this caused a problem since the unsecured property roll had to be assessed, billed and collected before the budget was adopted and the tax rate fixed. The solution to this incompatible order of events was resolved with the adoption in 1924 of article XIII, section 9a, of the California Constitution, now section 12,[4] which provides for the application of the previous year's tax rate to the unsecured tax roll. It seems apparent if the rate is known in advance, it should be applied to both rolls to avoid the necessity of adjusting the rate later to accomplish that equalizing result.

It was in this setting the Auditor and Tax Collector faced the dilemma in billing taxes on the unsecured tax roll for the first year after the passage of Proposition 13 on June 6, 1978. Proposition 13 by its narrow language apparently only applies to real property and is effective for the tax year beginning July 1 following passage of the article.[5] The Controller announced San Diego County would tax property on the unsecured rolls in the manner followed in previous years under the authority of

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(Footnote continued from preceding page)

other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction."

[4] "Sec. 12. (a) Except as provided in subdivision (b), taxes on personal property, possessory interest in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls."

[5] "Section 5. This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article."

article XIII, section 12, and use the rate of the previous year. The Board contests the propriety of that decision asserting that rate would violate Proposition 13.

This case does not present an issue of ambiguity or vagueness in the language of Proposition 13, for the language of article XIII A expressly makes the tax rate and valuation limitation effective for the tax year beginning July 1, 1978. Rather, it presents an apparent conflict between several equally explicit provisions in the Constitution. The solution may be found in general rules of construction of constitutional language.

In *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, the Supreme Court upheld the validity of article XIII A and noted the rule (at pp. 244-245), " '. . . since a written constitution is intended as and is the mere framework according to whose general outlines specific legislation must be framed and modeled, and is therefore . . . necessarily couched in general terms or language, it is not to be interpreted according to narrow or super-technical principles, but liberally and on broad general lines, so that it may accomplish in full measure the objects of its establishment and so carry out the great principles of government.' "

A most fundamental rule of construction is that the courts will interpret a measure adopted by vote of the people in such a manner as to give effect to the intent of the voters adopting it. The words used in a constitution must be taken in the ordinary and common acceptation, because they are presumed to have been so understood by the framers and by the people who adopted it (*Kaiser v. Hopkins,* 6 Cal.2d 537, 538-539). The constitutional and other enactments must receive a liberal, practical common sense construction which will meet changed conditions and the growing needs of the people (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra,* 22 Cal.3d 208, 245).

Article XIII A is broadly stated and limits any ad valorem tax on *real* property to one per cent of "the full cash value of such property." There is no indication of any intent to make

the limitation applicable only to property on the secured tax roll. Possessory interests and taxable improvements on property exempt from taxation or taxable to another, for example, are "real property" (*Forster Shipbldg. Co. v. County of L.A.*, 54 Cal.2d 450, 455-456), although they normally appear on the unsecured tax roll. It follows under Proposition 13 these "real property" interests are entitled to the one per cent limit applicable to all other real property.

California Constitution article XIII, section 1, not repealed by the adoption of Proposition 13, reads ". . . (a) *All property* is taxable and shall be assessed at the same percentage of fair market value," and article XIII, section 2, says "the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." Taken together, these provisions of the Constitution mandate that personal property is entitled to the same limitation which applies to real property. The use of the previous year's tax rate on personal property is for convenience, addressing only the situation where the current tax has not yet been fixed (see *Delaney v. Lowery*, 25 Cal.2d 561, 567). However, the preceding year's tax rate cannot be used where it would violate the provisions of article XIII A, sections 1 and 2. After the adoption of Proposition 13 which set a maximum tax rate as well as a valuation limitation, the use of any tax rate or valuation which would impose a tax burden in excess of the one per cent limit would be unconstitutional.[6] We view the provisions of article XIII A, sections 1 and 2, and article XIII, section 12, as being compatible with each other; there is no repeal by implication of the latter section.[7] The use of the

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[6] The limitation of tax rate is interrelated to the tax valuation (see *Amador Valley etc. v. State Bd. of Equalization, supra*, 22 Cal.3d 208, at p. 231).

[7] Should the Legislature ever reduce the tax it has imposed on real property, the provisions of article XIII, section 12, could have significance permitting use of the preceding year's tax rate on the unsecured tax roll. In this connection too, section 100, adopted July 24, 1979, as an emergency measure, permits any jurisdiction to request reduction of the amount of property tax computed for it under specified provisions according to a

(Footnote continued on following page)

previous year's tax rate here would impose a burden on property subject to the unsecured roll beyond the limitation contained in Proposition 13.

Legislative and administrative interpretation and implementation of the new enactment are traditionally accorded great weight in construing the language of constitutional amendments (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra,* 22 Cal.3d 208, 246). Moreover, where more than one reasonable meaning exists as to a constitutional provision, the courts are bound to accept the construction chosen by the Legislature. (*Lundberg v. County of Alameda,* 46 Cal.2d 644, 652; and see *Methodist Hosp. of Sacramento v. Saylor,* 5 Cal.3d 685, 692-693).

Following the adoption of Proposition 13, the Legislature added section 2237 which reads, in part:

> "(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code." (Stats. 1978, ch. 332, eff. 6/30/78; see now § as amended by Stats. 1979, ch. 29.)

(Footnote continued from preceding page)
designated formula. The formula divides the taxable assessed value on the secured roll into the amount of property tax revenue to be reduced and multiplies by 100 to arrive at the effective tax rate reduction. The effective tax rate reduction is then applied to the taxable assessed value on each secured roll tax bill and the resulting amount is deducted from the one per cent which otherwise applies under section 2237, subdivision (b). In the concluding sentence of section 100, subdivision (a), the Legislature recognizes the effect of article XIII, section 12, by providing: "The same effective tax rate reduction shall be applied in a comparable manner to the taxable assessed value on the next succeeding unsecured roll tax bill for property within the jurisdiction." (§ 100, added by Stats. 1979, ch. 282, and amended by Stats. 1979, ch. 1161.)

Since the assessed value is one-fourth of the full cash value, this section mandates an ad valorem tax on all property of one per cent, the limit set out in Proposition 13.[8] The Legislature sought to equalize the tax burden for both real and personal property.

The Legislature was not alone in its interpretation of the intent of Proposition 13. Two days after the enactment of this amendment, the Chief of the Assessment Standards Division of the Board of Equalization issued a letter on his official stationery to all county tax assessors, which advised them as follows:

> "The approval of Proposition 13 does not subject personal property to any value limitations. Therefore, personal property will continue to be appraised annually at its full cash value.
>
> "The *tax rate limitation* specified in Proposition 13 must be applied to *all* assessments (both real and personal property) enrolled on the *unsecured* and *secured* portions of the 1978-79 assessment roll.
>
> "Section 2 of Article XIII of the Constitution provides that the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction. Because the real property assessments enrolled on the secured and unsecured portions of the 1978-79 assessment roll are subject to Proposition 13's tax rate limitation, the tax rate limitation on personal property assessment must be similarly limited." (Italics in original.)

On the record before us, this position was never overruled by the Board.

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[8] It should be noted Proposition 13 speaks in terms of "full cash value" which differs from "assessed value" which is normally 25 percent of true market value. (See § 110, 110.1; and *Amador Valley etc. v. State Bd. of Equalization, supra,* 22 Cal.3d 208, at p. 247.)

The Attorney General took the same position, writing:
"It seems evident that there is no intent to roll back valuations of personal property, whether it is on the secured roll or the unsecured roll. Section 2(a) is quite clear in stating that only real property is to be valued according to the 1975-76 'full cash value.' However, because the *rate* applied to the secured roll in each tax code area is applied equally to land, improvements and personal property, the one percent rate limitation imposed by section 1(a) is applicable to all property on the secured roll. This being the case, could it be concluded that personal property on the unsecured roll is not subject to the one percent rate limitation in view of the requirement of section 2, article XIII, of the Constitution that the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction? As noted above, real property on the unsecured roll is subject both to the one percent rate limitation and the roll-back of full cash value. It seems apparent that if the one percent limit is applied to real property on the unsecured roll but not to personal property, a taxpayer who owns personal property assessed on the unsecured roll could successfully argue that section 2, article XIII, has not been complied with because personal property taxed at a rate exceeding one percent of full value in 1978-79, or in the first year section 1(a) is operative.
"While sections 1(a) and 2(a) of article XIII A speak in terms of the 'full cash value' of real property, it seems clear from the reference in section 2(b) to 'the fair market value' that the initiative uses these terms interchangeably, as defined in section 110, Revenue and Taxation Code. Thus, while sections 1 and 2 of article XIII, of the Constitution utilize the term 'full value,' section 1 of article XIII makes it clear that 'full value' means 'fair market value' unless another value standard is prescribed in the Constitution. Thus taxable personal property, possessory interests, and taxable improvements on land exempt from

taxation are valued at their fair market value and assessed at 25 percent of their 'full value' under section 401, Revenue and Taxation Code. However, 'full value' may be determined for the purposes of applying section 2, article XIII, of the Constitution, the provisions of sections 1(a) and 2(a) of article XIII A are applicable to real property on the unsecured roll, and the requirement of section 2, article XIII, quoted above, mandates that the tax rate for personal property on the unsecured roll be no higher than the tax rate for real property on the unsecured roll. Both are, accordingly, subject to the one percent rate limitation prescribed in section 1(a) of article XIII A." (Ops. Cal. Atty. Gen. (Jun. 26, 1978) CV 78-76.)

Relying on that opinion, the California State Controller adopted the same position in a letter to the County Tax Collector dated June 29, 1978.

Our position is further strengthened by the statement of the legislative analyst contained in the California Voters Pamphlet distributed to all voters before the election. Use of that statement in understanding the voters' intent is appropriate in aid of our construction of the amendment to the Constitution (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, supra*, 22 Cal.3d 208, at 245-246). That statement reads:

"The following is a summary of the main provision of this initiative:

"1. *Property tax limit.* Beginning with the 1978-79 fiscal year, this measure would limit the amount of property taxes that could be collected from an owner of county assessed *real* property to 1 percent of the property's full cash value. This measure does not mention county assessed personal property (such as business inventories), or state assessed property (such as public utilities), but the Legislative Counsel advises us that the 1 percent limit would apply to *all* types of taxable property." (Italics in original.)

The arguments for and against Proposition 13 did not contradict that statement or otherwise put that point in issue.

The law of California is clear that personal property taxes should not exceed real property taxes and by putting a ceiling on the latter, we have effectively put a ceiling on the former. This was undoubtedly the purpose and objective of the voters in enacting Propostion 13. Since the tax rate for all property taxed after the first year will be one percent of the full cash value, it will be unnecessary to use article XIII, section 12(a) (i.e., apply last year's tax rate) unless the Legislature amends section 2237.

Judgment affirmed.

CERTIFIED FOR PUBLICATION.

/s/ Cologne
J.

WE CONCUR:

/s/ Brown
P.J.

/s/ Wiener
J.

Appendix D

Filed January 30, 1980
Robert L. Ford, Clerk

In the Court of Appeal, Fourth Appellate District

Division One

State of California

4 Civ. No. 18580
Super. Ct. No. 421865

BOARD OF SUPERVISORS OF THE SAN DIEGO COUNTY,

Plaintiff and Respondent,

v.

GERALD J. LONERGAN, *etc.*,

Defendant and Appellant,

JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,

Respondent and Defendant.

MODIFICATION OF OPINION ON DENIAL OF REHEARING

The opinion is modified in the following respects:

On page 2, footnote 1, strike out line 10, reading:

". . . . . ."

On page 8, line 15, after the quotation mark, add: (Italics added.)

"Likewise, there is nothing prohibiting the carrying forward of the debt service component of the last preceding year's secured rate to the current year's unsecured rate in order to comply with the exception to the one per cent limitation contained in section 1(b) of article XIII A for payment of pre-existing, voter approved indebtedness. Doing this, of course, gives effect to section 12 of article XIII as well."

On page 14, line 11, after the period, insert:[9]

On page 14, after the signatures, insert:

"FOOTNOTE 9:

The judgment here under review also provides for a separate tax rate for the payment of interest and redemption charges on indebtedness approved by the voters before July 1, 1978. This is authorized under section 1(b) of article XIII A. There is no genuine issue on this appeal concerning that portion of the judgment. Accordingly, although we affirm the judgment, this opinion is limited to the provisions of section 1(a) of article XIII A."

The Petition for Rehearing is denied.

/s/ Cologne
Acting Presiding Justice

Appendix E

Filed September 12, 1978
Robert D. Zumwalt, Clerk

In the Superior Court of the State of California in and for the County of San Diego

No. 421865

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY,

Petitioner and Plaintiff,

v.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego; and JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,

Respondents and Defendants.

JUDGMENT GRANTING DECLARATORY RELIEF AND DENYING PREEMPTORY WRIT OF MANDATE AND INJUNCTIVE RELIEF

The verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunction in the above-entitled matter came on regularly for hearing and trial, pursuant to the Order To Show Cause issued by this Court which was served on Respondents/Defendants (hereinafter "Respondents") in the manner provided by law, on September 7, 1978 at 1:30 p.m. in Department 23 of the above-entitled court. The Honorable Jack Levitt, Judge of the Superior Court in and for the County of San Diego, presided without a jury.

Peter G. Aylward and William S. Boggs of Gray, Cary, Ames & Frye appeared for the Petitioner/Plaintiff (hereinafter "Petitioner") and Jack Limber of the County Counsel's office appeared for the Respondents.

This matter having been heard, evidence, both by documentary and by affidavits, having been introduced, the matter having been fully briefed, argument having been presented by both sides at the hearing, findings of fact and conclusions of law having been waived, the matter having been submitted for decision, and due to the importance of the decision and the time constraints involved, the Court hearing elected to rule by way of an oral decision from the bench as is set forth in Exhibit A attached hereto and incorporated herein by reference,

IT IS ORDERED, ADJUDGED AND DECREED that:

1. Respondents are legally required to compute, bill and collect property taxes on the unsecured roll for 1978/79, in accordance with the tax rate and valuation limitations determined pursuant to Article XIIIA, Sections 1 and 2 of the California Constitution and of Revenue and Taxation Code Sections 2237 and 110.1;

2. The tax rate applied to the taxable assessed value on the 1978/79 San Diego County unsecured tax roll shall be, (a) four dollars per one hundred dollars of taxable assessed value plus, (b) that portion of the 1977/78 secured tax rate equal to the amount of said secured tax rate which was required during the 1977/78 fiscal year by such local agency, school district, county superintendent of schools and/or community college district whose boundaries encompassed said unsecured property on March 1, 1978, to make annual payments for interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, plus (c) the tax rate under the 1977/78 fiscal year attributable to the tax rate increases in effect for said 1977/78 fiscal year which were approved by the voters pursuant to the provisions of

Sections 39308, 39311, 81388 and 81341 of the California Education Code to the extent the boundaries of such school district or community college district encompassed said unsecured property on March 1, 1978;

3. It is unnecessary in light of the aforestated declaration to determine whether the Court has jurisdiction to grant the Writ of Mandate or the Injunctive Relief which was sought, and therefore, the preemptory writ of mandate and the injunctive relief applied for in this action are denied and the previously issued temporary restraining order is dissolved.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that:

1. The parties are estopped from applying a delinquency date for unsecured property taxes earlier than 5:00 p.m. on the last day of the month succeeding the month in which the unsecured tax bills are mailed to San Diego County taxpayers or, at 5:00 p.m. on the 30th day of November, 1978, whichever first occurs;

2. In the alternative, any uncollected delinquent penalty provided for in Revenue and Taxation Code Section 2922 be cancelled by the parties in accordance with either or both of Revenue and Taxation Code Sections 2617.5 and 4985;

3. Petitioner shall amend the rules of the San Diego County Assessment Appeal Boards to provide that the deadlines set forth in Section 1603 of the Revenue and Taxation Code as to assessments on the 1978/79 unsecured roll be extended to November 30, 1978; and

4. Each party bears its own costs.

Dated: September 12, 1978

/s/ Jack R. Levitt

Judge of the Superior Court

Appendix F

Filed September 11, 1978
Robert D. Zumwalt, Clerk

In the Superior Court of the State of California in and for the County of San Diego

No. 421865

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY,

Petitioner and Plaintiff,

v.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego; and JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,

Respondents and Defendants.

Reporter's Transcript

Monday, September 11, 1978

APPEARANCES:

For Petitioner: GRAY, CARY, AMES & FRYE
By: Peter G. Aylward and
William S. Boggs
2100 Union Bank Building
San Diego, CA 92101

For Respondents: DONALD L. CLARK, County Counsel
By: Jack Limber, Deputy
355 County Admin. Center
San Diego, CA 92101

Jean A. Yarnell, CSR #2773
Official Reporter
Superior Court

EXHIBIT "A"

SAN DIEGO, CALIFORNIA, MONDAY, SEPTEMBER 11, 1978, 9:00 A.M.

THE COURT: The question presented to the Court in connection with this matter is whether, and to what extent, Article XIII A of the California Constitution applies to the levying of taxes on property, both real and personal, assessed on the unsecured county tax rolls.

Because of the importance of the decision and the time constraints involved, an early determination has been thought to be of the utmost importance; accordingly, the Court, rather than writing a written decision in the matter, has elected to rule by way of an oral decision from the Bench.

On June 6, 1978, Proposition 13, which enacted Article XIII A into the California Constitution, was adopted to become effective July 1, 1978, in large part. It has been implemented by the legislature by various chapters of the laws of 1978 effective June 30, 1978. Article XIII A set a maximum amount of tax on real property and rolls back the valuation on that property to that of the 1975/1976 taxable year.

Petitioner/Plaintiff, which I will refer to hereinafter simply as Petitioner, brings an action in mandate, declaratory relief and injunction to seek a resolution of the question presented to the Court.

Respondents/Defendants, which the Court will hereinafter refer to as merely Respondents, counter by seeking a protective order seeking the right to mail tax bills on the unsecured roll at the rate applied for the secured tax rate of the preceding year. The Court issued the restraining order which heretofore, or which still remains in existence, and the Court summarizes the positions of the parties very briefly as follows:

Petitioners contend that mandate is a necessary and proper remedy to compel the Respondents to perform their required ministerial duties properly pursuant to the constitution and

various sections of the Revenue and Taxation Code and the Government Code. They further contend that a preliminary injunction can properly issue in such a case and that the tax rate limitations set forth in Article XIII A, Section 1, must be applied to all real and personal property taxable on the unsecured roll for the 1978/79 fiscal year.

Respondents to the contrary contend that neither mandate nor injunction will lie to prevent or enjoin the collection of property taxes sought to be collected; further, that the established procedure for collecting taxes on the unsecured roll set forth in Article XIII, Section 12, and Revenue and Taxation Code section 2905 is not changed by Article XIII A or its implementing legislation, and they finally contend that Article XIII A does not apply to the unsecured roll in any event.

The interpretation problems presented to the Court may be set forth in three parts. The first part has to deal with five provisions of the state constitution which are in issue.

First, Article XIII, Section 1, which establishes that there shall be equal assessment of valuation at a uniform rate to fair market value; Article XIII, Section 2, which authorizes differential taxation of personal property subject to the limitation that the tax per dollar of the full value shall not be higher on personal property than on real property in the same taxing jurisdiction; Article XIII, Section 12, as implemented by Revenue and Taxation Code section 2905 requiring the use of the prior year's secured tax rate as applied to the secured roll for the current year's unsecured taxes for assessments on the unsecured rolls; Article XIII, Section 20, which authorizes the legislature to provide maximum property tax rates for local governments; and finally, Article XIII A itself, that is, Proposition 13, as implemented by various Revenue and Taxation Code sections disallows any ad valorem tax on real property to exceed one percent of the full cash value of such property.

As to this first interpretation problem, whether there is conflict or inconsistency among these five constitutional provisions, and if so, the resolution thereof, is presented to the Court.

The second interpretation problem deals with various constitutional construction rules which are urged upon the Court by both parties. They include, but are not necessarily limited to the following:

> The main object to the interpretation is to ascertain the intent of the parties who enacted the instrument, and in that connection, various interpretation aids are referred to, for example, the Voters' Pamphlet, the Opinions of the Attorney General, the State Board of Equalization, the State Controller and so forth. The adoption by statute of an alternative meaning of a constitutional provision is controlling, and various statutes have been adopted since Proposition 13, and they are referenced to the Court: That uniformity of treatment is dictated; that the provision adopted last in time should prevail; that the more specific provision will prevail over the more general, whether adopted last or first; and also that constitutional provisions which may appear in conflict or to be inconsistent should be harmonized.

The third interpretation aspect has to do with the following contentions: By Petitioner that application of the prior year's tax rate would violate the equal protection clause of the Fourteenth Amendment of the United States Constitution; by Respondent that Article XIII A cannot be given retroactive application; and further by Respondent that Article XIII A cannot be applied to the 1978/79 unsecured roll without making a constitutionally prohibited gift of funds and without impairing the vested rights of all public entities to the taxes due on March 1, 1978, on the unsecured rolls.

The Court has considered these various interpretation problems and weighed the various matters presented to it. Because of the importance of this decision, not only to the orderly functioning of the judicial process, but also to preserve the taxpayer and voter confidence in our system of government, the Court has determined to set forth some of the considerations underlying its determination.

I'm not unmindful that the propriety of this Court's determination is not to be decided because it was based upon an erroneous theory or upon improper or unsound reasoning. So long as the ruling or decision is itself correct in law, it will not be disturbed on appeal or review regardless of the considerations which may have moved this Court to its conclusion. Nonetheless, I think everyone concerned is entitled to know the Court's thinking; accordingly, the Court has resolved the issues in part based as follows:

> First, application of the Article to the unsecured rolls. Although Article XIII A discloses no mention of personal property or of unsecured roll taxes, and although it refers to the 1975/76 tax bill relative to valuation, it also limits any ad valorem tax on real property. Since the unsecured roll contains real property as well as personal property, and since tax bills were sent out for the taxable year 1975/76 for unsecured property taxes as well as for secured property taxes as allowed by Revenue and Taxation Code sections 2610.5, 2910.6 and others, the Court concludes that Article XIII A does apply to the unsecured rolls. This interpretation harmonizes the constitutional provisions setting a maximum tax rate limitation on all real property and specifying that tax on personal property must be at the same rate as on real property in the same taxing jurisdiction.

As to repeal of Article XIII, Section 12, and hence Revenue and Taxation Code section 2905, the Court finds that such result is unnecessary due to harmonizing of the several constitutional provisions. Because section 1(b) of Article XIII A and Revenue and Taxation Code section 2237(a) provide for the annual levy of a property tax by public agencies in an amount equal to the amount required to make annual debt service payments, there remains an application for Section 12, and hence it remains viable and not in conflict with Article XIII A.

Moreover, if in the future the legislature were to revise Revenue and Taxation Code section 2237 to provide for less than a four percent rate, such would require a further application of Section 12. The Court therefore does not find Section 12 of Article XIII and Article XIII A to be in conflict or irreconcilable.

As to equal protection, the Court concludes there could be no violation of equal protection because a reasonable distinction exists between the secured and the unsecured roll. The case of *Abrams vs. San Francisco,* decided in 1941, and found in volume 48 of the Second series of the California Appellate Reports at page 1, and in particular on pages 4 and 5, recognized that the distinction between secured and unsecured taxes is intrinsic and dealt with the difference in collectability and not merely administrative convenience. Hence there is a natural intrinsic and constitutional difference between secured and unsecured taxes, and different treatment thus would not, in this Court's vice, violate the federal constitution.

As to retroactivity, impairment of contract and gift of public funds, which may be considered in the same category, the Court finds as follows: The basis of Respondents' position on these issues is that the taxes on unsecured property became due on the lien date of March 1, 1978, which was before the applicable date of Article XIII A and its enabling legislation.

Further, because the prior year's secured tax roll rate was the known, as was the assessment, that it is a mere matter of computation to determine the tax; that if applied retroactively, the result would be to exempt or release a portion of the taxes on the unsecured roll, the right to which had already vested in the taxing entities and would thus result in an unconstitutional gift of public funds in violation of Article XVI, Section 6, of the California Constitution.

Central also to their position is the contention that retrospective application must be expressed by clear and positive command within the legislation itself or inferred by unequivocal and necessary implication.

A constitutionally prohibited impairment of public agency's contract may be asserted only when the public agencies are unable to meet their fiscal obligations. It has not been shown to this Court that offset revenues as a result of legislative action will not occur and allow the agencies to meet their fiscal obligations or, indeed, even in absence thereof, that they would be unable to do so.

Article XVI, Section 6, of the constitution dealing with the gift of public funds prevents only the legislature from making a gift of public funds. Retroactive application of Proposition 13 would not be an act of the legislature. Even if it were so construed by virtue of enabling legislation, the exception to the rule against the gift of public funds, namely, that expenditure of public funds which involve a benefit to private persons are not gifts within the meaning of the constitutional provision, if those funds are expended for a public purpose, would apply.

As set forth in the Voters' Handbook in support or in connection with Proposition 13, that proposition was to help farmers and keep business in California and make home and building improvements possible and create thousands of new jobs and make property taxes fair, equal and within the ability to pay for all Californians, all of which are public purposes.

The Court concludes that such unavoidable implication is manifest by the subject matter and occasion of the enactment. The proposition in its expressed provision is to apply to the 1978/79 tax year, and is bolstered by the several extrinsic aids called to the Court's attention.

Based on the foregoing, the Court declares the following: One, Respondents are legally required to compute, bill and collect property taxes on the unsecured roll for 1978/79, in accordance with the tax rate and valuation limitations determined pursuant to Article XIII A, Sections 1 and 2 of the California Constitution and of Revenue and Taxation Code sections 2237 and 110.1.

Two, the tax rate applied to the taxable assessed value on the 1978/79 San Diego County unsecured tax roll shall be, (a), four dollars per one hundred dollars of taxable assessed value plus, (b), that portion of the 1977/78 secured tax rate equal to the amount of said secured tax rate which was required during the 1977/78 fiscal year by such local agency, school district, county superintendent of schools and/or community college district whose boundaries encompassed said unsecured property on March 1, 1978, to make annual payments for interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978, plus, (c), the tax rate under the 1977/78 fiscal year attributable to the tax rate increases in effect for said 1977/78 fiscal year which were approved by the voters pursuant to the provisions of sections 39308, 39311, 81388, and 81341 of the California Education Code to the extent the boundaries of such school district or community college district encompassed said unsecured property on March 1, 1978.

It is unnecessary, in light of the declaration just stated, to determine whether the Court has jurisdiction to grant the writ of mandate or the injunctive relief which was sought. The Court does, however, exercise its equitable jurisdiction to avoid potential problems of delinquency and time constraints to file assessment appeals without necessitating undue hardship on taxpayers as a result of delays in billings beyond their control by ordering the following:

One, that the parties are estopped from applying a delinquency date for unsecured property taxes earlier than five p.m. on the last day of the month succeeding the month in which the unsecured tax bills are mailed to San Diego County taxpayers or, at five p.m. on the 30th day of November, 1978, whichever first occurs; in the alternative, that any uncollected delinquent penalty on property provided for in Revenue and Taxation Code section 2922 be canceled by the parties in accordance with either or both of Revenue and Taxation Code sections 2617.5 and 4985; three, that Petitioner shall amend the rules of

San Diego County Assessment Appeals Boards to provide that the deadlines set forth in section 1603 of the Revenue and Taxation Code as to assessments on the 1978/79 unsecured roll be extended to November 30, 1978.

Are there any questions by any of the counsel?

MR. BOGGS: No, your Honor.

MR. LIMBER: No, your Honor.

MR. AYLWARD: No, your Honor.

THE COURT: Once again I want to thank all counsel, not only for their cooperation, but their professionalism, their dedication and their diligence in the pursuit of this matter.

Your cooperation has been gratefully received by the Court. I thank you publicly for it.

MR. LIMBER: Thank you, your Honor.

MR. AYLWARD: Thank you, your Honor.

MR. BOGGS: Thank you, your Honor.

THE COURT: The Court is in recess.

(Conclusion of proceedings in this matter.)

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.:

I, Jean A. Yarnell, a Certified Shorthand Reporter and an Official Court Reporter of the Supreme Court of the State of California, in and for the County of San Diego, do hereby certify that I reported stenographically the proceedings had in the foregoing action and that the preceding transcript, consisting of pages numbered from 1 through 11, inclusive, is a full, true and correct transcription of my shorthand notes taken during the matters heard.

Dated this 11th day of September, 1978, at San Diego, California.

/s/ Jean A. Yarnell

JEAN A. YARNELL, CSR #2773
Official Reporter

Appendix G

Order Due
October 10, 1980

Supreme Court
Filed September 17, 1980
Laurence P. Gill, Clerk

ORDER DENYING REHEARING

L.A. No. 31244

In the Supreme Court of the State of California
In Bank

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY

v.

LONERGAN, AS AUDITOR AND CONTROLLER, ETC.

Respondent's petition for rehearing DENIED. Request to modify opinion denied.

/s/ Bird
Chief Justice

Appendix H

Supreme Court
Filed August 29, 1980
Lawrence P. Gill, Clerk

In the Supreme Court of the State of California

4th Civil No. 18580

BOARD OF SUPERVISORS OF SAN DIEGO COUNTY,
Petitioner, Plaintiff and Respondent,

v.

GERALD J. LONERGAN, Auditor and Controller, of the County of San Diego,
Respondent, Defendant and Appellant,

JAMES E. JONES, Treasurer-Tax Collector of the County of San Diego,
Respondent and Defendant.

Appeal from the Superior Court of San Diego County
The Honorable Jack R. Levitt, Judge

RESPONDENT'S PETITION FOR A REHEARING BY THE SUPREME COURT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

INTRODUCTION

On August 14, 1980, this Court held that the tax rate limitations of Proposition 13 (Cal. Const., Art. XIII A) do not apply to property on the 1978-79 unsecured roll. Accordingly, this Court reversed the judgment of the Superior Court, below.

For the Federal constitutional grounds discussed below, the Board of Supervisors of the County of San Diego (the "Board") hereby respectfully requests that this Court grant the Board's Petition for Rehearing. Otherwise, if the August 14, 1980 decision of this Court is allowed to stand, the citizens of California will be denied a fundamental constitutional right—the right to reside in a state with a republican form of government. In addition, if the August 14, 1980 decision of this Court is allowed to stand, the tax imposed by this Court in that decision will be violative of the due process clause of the Fourteenth Amendment since the legal basis for such tax is arbitrary and capricious.

THE TAX IMPOSED BY THIS COURT IN ITS AUGUST 14, 1980 DECISION IS VIOLATIVE OF THE UNITED STATES CONSTITUTION

Long before the passage of Proposition 13 on June 6, 1978, the California legislature was closely examining the revenue-decreasing effects of the various provisions of the initiative. For example, on December 29, 1977 the Legislative Counsel forwarded to the Legislative Analyst a twenty-page letter which addressed nine specific legal aspects of Proposition 13. In this letter, the Legislative Counsel determined that the Proposition 13 tax rate limitation (and not Article XIII, Section 12) would apply to real and personal property owned by taxpayers on the 1978-79 unsecured roll.

> "Nations in general, even under governments of the more popular kind, usually commit the administration of their finances to single men or to boards composed of a few individuals, who digest and prepare, in the first instance, the plans of taxation, which are afterwards passed into law by the authority of the sovereign or legislature." (The Federalist No. 36 A. Hamilton).

The Ballot Pamphlet to Proposition 13 sent to each voter in California contained the following passage:

> "This measure does not mention county assessed personal property (such as business inventories), or state assessed property (such as public utilities), but the Legislative Counsel advises us that the 1 percent limit would apply to *all* types of taxable property. "(California Voters Pamphlet, Primary Election (June 6, 1978) p. 56).

The Taxpayers of California were thereby informed that the most complete legal analysis then in existence had concluded that Proposition 13 would apply to all property—including business properties and property of public utilities.

> "The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE." (The Federalist No. 22 (A. Hamilton)).

Two days after the adoption of Proposition 13, the State Board of Equalization informed each County Assessor in writing that:

> "The *tax rate limitation* specified in Proposition 13 must be applied to *all* assessments (both real and personal property) enrolled on the *unsecured* and *secured* portions of the 1978-79 assessment roll." (C.T. page 250).

On or prior to June 27, 1978, the Attorney General ruled that Proposition 13 should apply to the 1978-79 unsecured roll.

Likewise, in a letter dated June 29, 1978, the State Controller urged all County Tax Collectors to apply the lower tax rate of Proposition 13 to all taxpayers with property on the 1978-79 secured roll.

> "A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be, in practice, a bad government." (The Federalist No. 70 (A. Hamilton)).

On June 24, 1978, the California Legislature adopted the enabling legislation for Proposition 13. This legislation provided that the tax rate limitations of Proposition 13 would apply to all real and personal property owned by the taxpayers on the 1978-79 unsecured roll. Based on the premises that the tax rate limitation of Proposition 13 applied to all taxpayers on the 1978 tax rolls, the legislature also adopted remedial legislation to provide "offset" financing to public agencies which suddenly faced decreased revenues.

> "There is no part of the administration of government that requires extensive information and a thorough knowledge of the principles of political economy, so much as the business of taxation. The man who understands those principles best will be least likely to resort to oppressive expedients, or to sacrifice any particular class of citizens to the procurement of revenue. It might be demonstrated that the most productive system of finance will always be the least burdensome. There can be no doubt that in order to a judicious exercise of the power of taxation, it is necessary that the person in whose hands it is should be acquainted with the general genius, habits, and modes of thinking of the people at large, and with the resources of the country. And this is all that can be reasonably meant by a knowledge of the interests and feelings of the people. In any other sense the proposition has either no meaning, or an absurd one. And in that sense let every considerate citizen judge for himself where the requisite qualification is more likely to found." (The Federalist No. 35 (A. Hamilton)).

After the adoption of Proposition 13 by the people and the implementing legislation by the legislature, various County Tax Collectors and County Auditors in the state nevertheless sought to ignore the directives of the Attorney General, the Controller, and the Board of Equalization as to the application of Proposition 13 to the 1978-79 unsecured roll at a rate of two to three times the tax rate limitations of Proposition 13.

"Men often oppose a thing merely because they have had no agency in planning it, or because it may have been planned by those whom they dislike. But if they have been consulted, and have happened to disapprove, opposition then becomes, in their estimation, an indispensable duty of self-love. They seem to think themselves bound in honor, and by all the motives of personal infallibility, to defeat the success of what has been resolved upon contrary to their sentiments." (The Federalist No. 70 (A. Hamilton)).

On July 28, 1978, the Attorney General, Controller, and State Board of Equalization filed a Petition for Writ of Mandate before this Court. (LA 30996). This Court was urged by these responsible state officials to command the County Tax Collectors and County Auditors of twenty-three California counties to apply Proposition 13 to the 1978-79 unsecured tax roll for the following reasons:

"(1) With respect to county taxpayers, the excess tax rate used on said bills represents hundreds of millions in tax which will be erroneously paid by the county taxpayers of the respondent counties.

(2) Petitioners are informed and believe that the majority of county tax collectors have issued or will issue 1978 unsecured property tax bills in conformance with Article XIII A Section 1 of the California Constitution. In order to insure a uniform and predictable application the property tax laws throughout the State of California the tax collectors and auditors of the respondent counties should not be permitted to let stand property tax bills using tax rates in excess of that permitted by the Constitution and laws of the State of California.

(3) Thousands of taxpayers will necessarily have to pay hundreds of millions of dollars of illegally computed taxes and thereafter claim refunds resulting in a great multiplicity of law suits or class actions on behalf of taxpayers.

(4) There is a substantial danger that if these funds are collected by the counties and expended, there may be no available revenue source out of which to pay refunds in view of the severe limitations placed upon the revenue gathering capacity of the counties by reason of Article XIII A of the Constitution." (LA 30996 pp. 11-12).

On August 16, 1978, this Court summarily denied without an opinion the Writ of Mandamus filed by the Attorney General, the Controller, and the Board of Equalization.

"There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of a republican government . . . Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy." (The Federalist No. 70 (A. Hamilton)).

In August, 1978, the Board sought judicial guidance on the question of whether the San Diego County Tax Collector and Auditor should apply Proposition 13 to the 1978-79 unsecured roll. A San Diego County Superior Court judge and three justices of the Court of Appeals (Fourth Appellate District) then held that Proposition 13 applied to all property on the 1978-79 unsecured roll.

In November, 1978, a taxpayer in Los Angeles County (Roy E. Hanson, Jr., Mfg.) brought a refund suit against the County to recover taxes paid in excess of the tax rate limitations of Proposition 13 on the grounds that Proposition 13 should have applied to the 1978-79 Los Angeles unsecured roll. A Los Angeles Superior Court and a unanimous District Court of Appeals (Second Appellate District) held that Proposition 13 applied to property on the 1978-79 unsecured roll.

Accordingly, before this Court's decision on August 14, 1980, there was unanimity among the California legislature, the Attorney General, the Controller, the State Board of Equalization and eight State court judges that Proposition 13 clearly applied to the 1978-79 unsecured roll. On August 14, 1980, however, this Court unanimously held that Proposition 13 clearly did not apply to property on the 1978-79 unsecured roll.

> "One of the more striking innovations introduced by the Philadelphia Convention in the 1787 Constitution was a clause in section 4 of Article IV that states: 'The United States shall guarantee to every State in this Union a Republican Form of Government.' This guarantee clause appears in an article of the Constitution that is a catchall of provisions dealing with intergovernmental relations. The remainder of section 4 requires the United States to protect each of the states against 'Invasion' and 'on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.'
>
> The guarantee clause is unique in that it is the only restriction in the federal Constitution on the form or structure of the state governments. It empowers the federal government to oversee the organization and functioning of the states. It authorizes Congress and, perhaps to a lesser extent, the President and the Supreme Court to superintend the acts and the structure of the state governments and to inhibit any tendencies in a state that might deprive its people of republican government." (Wiecek, The Guarantee Clause of the U.S. Constitution 1 (1972) (hereinafter "Weicek")).

This Court based its decision that Proposition 13 does not apply to property on the 1978-79 unsecured tax roll on some rather curious factual findings. This Court first concluded that the analysis of Proposition 13 by the Legislative Analyst set forth in the ballot pamphlet gave an ". . .overbroad and inaccurate definition of real and personal property. Chief among its deficiencies is the absence of any mention of taxable

possessory interests. Moreover, it (the ballot pamplet summary) wholly fails to apprise voters of the concept of secured versus unsecured taxes."

Thus, this Court concluded that the voters could have formed no intent as to the application of Proposition 13 to property on the 1978-79 unsecured roll since the ballot pamphlet described Proposition 13 in terms which a layman could understand (and thus did not use the technical terms "secured" and "unsecured" taxes).

Although the analysis in the ballot pamphlet did not use the exact terms "secured" or "unsecured" taxes, the following extract of the language actually used in the ballot pamphlet clearly reveals that the terms "real property", "land", and "buildings" were used to describe property on the secured roll to the voters, while the terms "personal property", "inventories", and "business inventories" were used instead to describe property on the unsecured roll.

> "The total local property tax roll consists of county assessments on real property (land and buildings) [i.e., the property classifications that comprise the bulk of the secured roll]. . . . Beginning with the 1978-79 fiscal year, this measure would limit the amount of property taxes that could be collected from an owner of county assessed *real* property [i.e., property on the secured roll] to one percent of the property's full cash value. This measure does not mention county assessed personal property (such as business inventories) [i.e., property on the unsecured roll]. . . but the Legislative Counsel advises us that the one percent limit would apply to *all* types of taxable property [i.e., property on both the secured and unsecured roll]. (Emphasis in original). (California Voters Pamphlet, Primary Election (June 6, 1978) p. 56).

Accordingly, contrary to this court's factual finding, the voters were specifically informed that personal property, and business inventories (which in the aggregate comprise the bulk of the 1978-79 unsecured roll) would receive the benefits of the one percent tax rate limitation of Proposition 13.

". . .[B] y 1787 American republicanism included the 'balanced constitution,' a conceptual mixture of separation of powers and a functionally mixed government, the former dependent on the latter . . . Neither checks and balances nor separation was sought for its own sake; both were structural principles designed to prevent governmental tyranny." (Wiecek, 22).

This Court then made a second factual finding that voters who were unaware of the unsecured tax roll ". . . were in no way enlightened by the ballot pamphlet, and therefore cast their votes without regard to any anticipated effect on unsecured taxes." In other words, this Court concluded that homeowners voted for Proposition 13 only to secure their own tax reductions and that these homeowners simply did not care whether business properties on the unsecured roll received the same tax relief. This Court attempted further to buttress the conclusion that voters unfamiliar with property taxation never intended to grant business property on the 1978-79 unsecured roll tax relief from Proposition 13 by the further erroneous factual finding that "Proposition 13 was widely publicized as a taxpayers' revolt providing tax relief for homeowners."

In fact, contrary to the above factual finding by this Court, the ballot pamphlet contained the following specific language indicating that the benefits of Proposition 13 were to run to both owners of business properties and homeowners.

"Homeowners and renters are most in need of property tax relief. But Proposition 13 gives two-thirds of the property tax decrease to commercial and industrial property owners." (California Voters Pamphlet, Primary Election (June 6, 1978) p. 59).

"[Proposition 13] gives nearly two-thirds of the tax relief to BUSINESS INDUSTRIAL property owners and apartment house LANDLORDS." (Id. at 58.)

Accordingly, a review of the entire ballot pamphlet compels the factual conclusion (contrary to that drawn by this court) that even citizens who were not familiar with the term

"unsecured roll" (i.e., homeowners) must have understood that the benefits of Proposition 13 were intended to run also to business properties.

> "As indicated in the foregoing analysis of the debates of the federal convention, it was no accident that discussions of the republican form of government and of the expressed guaranty to the states were perfunctory in character. However, the Federalist Papers are replete with references to separation of power as a fundamental concept of a free government . . . . The concept of a republican form of government and by implication the doctrine of separation of powers were the underlying assumption upon which the framework of the new government was developed. In reaching this conclusion, this court holds that the doctrine of separation of powers is an inherent and integral element of the republican form of government, and separation of powers, as an element of the republican form of government, is expressly guaranteed to the states by Article IV, Section 4 of the Constitution of the United States." (*Vansickle v. Shanahan,* 212 Kan. 426; 511 P. 2d 223 (1973)).

This Court made an astonishing factual finding in its opinion that even as to ". . . those voters who were knowledgeable of unsecured property taxes, the absence of *any* discussion in the ballot pamphlet could well have led them to believe that such taxes were not embraced by Proposition 13." Emphasis added.). However, as set forth above, the ballot pamphlet contained specific representations that business properties and business inventories would receive the tax benefits of Proposition 13.

Those voters familiar with unsecured property taxes (i.e., those citizens more familiar with business) would have understood precisely the analysis prepared by the Legislative Analyst, and these voters would have found the following extract from the ballot pamphlet helpful:

> "It will help farmers and keep business in California, will make home and building improvements possible and create thousands of new jobs." (California Voters Pamphlet, Primary Election (June 6, 1978) p.58).

There is simply no factual basis for this Court to conclude that those familiar with business could not comprehend the ballot pamphlet and thus could not form an intent with respect to the application of Proposition 13 to the 1978-79 unsecured roll. To the contrary, in light of the various statements made in the ballot pamphlet, the factual conclusion reached by this Court (i.e., that those California citizens with an interest in business neither intended or expected the tax benefits of Proposition 13 to apply to business properties on the 1978-79 unsecured roll) contradicts the economic nature of man.

> "What is a power but the ability or faculty of doing a thing? What is the ability to do a thing but the power of employing the *means* necessary to its execution? What is a LEGISLATIVE power but a power of making LAWS? What is the power of laying and collecting taxes but a *legislative power,* or a power of *making laws* to lay and collect taxes? What are the proper means of executing such a power but *necessary* and *proper* laws?" (The Federalist No. 33 (A. Hamilton)).

The Board set forth seven established constitutional construction rules in its brief before this Court all of which indicated that this Court should hold that Proposition 13 applies to the 1978-79 unsecured roll.

This Court conveniently sidestepped the effect of these established rules of constitutional construction by holding that there was no ambiguity whatsoever as to the application of Proposition 13 to the unsecured roll and, therefore, it was not necessary to resort to established rules of constitutional construction. Accordingly, the legal position adopted by every responsible state official, the Legislature and eight State Court judges was totally rejected by this Court as even a plausible

interpretation of Proposition 13 which would call into play established rules of constitutional construction. In the future, this case will therefore be cited for the proposition that the California Supreme Court need resort to established rules of constitutional construction only if the result so obtained is otherwise acceptable to the Court.

> "[W]here the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted." (The Federalist No. 47 (A. Hamilton)).

After analyzing the probable intent of the voters in adopting Proposition 13, this Court stated: "In sum, we simply cannot find any convincing evidence of voters' intent in the ballot pamphlet. We therefore decline to accept the board's characterization of that intent." (*Bd. of Supervisors v. Lonergan*, L.A. 31244 (Cal. Sup. Ct., Aug. 14, 1980) p. 15).

However, the Board in this case, sought to compel its auditor, Lonergan, to apply Proposition 13 to the 1978-79 unsecured roll in accordance with specific legislation adopted by the legislature. (See Rev. Tax. Code § 2237, as amended by Stats. 1978, Ch. 332). Thus, more important than rejecting the characterization of the Board, this Court also declined to accept the Legislature's determination of the intent of the voters on Proposition 13 (and that of the State Board of Equalization, the Attorney General, and the Controller).

> "It is agreed on all sides that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident that none of them ought to possess, directly or indirectly, an overruling influence over the others in the administration of their respective powers." (The Federalist No. 48 (J. Madison)).

Indeed, by rejecting the Legislature's determination and by refusing to apply Proposition 13 to the 1978-79 unsecured roll, this Court must have concluded that the action of the Legisla-

ture in extending Proposition 13 to the 1978-79 unsecured roll was unreasonable. Otherwise, had the action of the Legislature (subsequently endorsed by the Attorney General, the State Board of Equalization, and the Controller) been a reasonable interpretation of Proposition 13, this Court would have been bound to follow such a legislative interpretation. Under its own established rule dealing with the "fundamental" principles of separation of powers, this Court has held that:

> ". . . We cannot adopt our own interpretation of a provision of the Constitution without regard to the legislative construction and, where more than one reasonable meaning exists, it is our duty to accept that chosen by the Legislature . . . This fundamental principle is particularly applicable where, as here, the statute was enacted pursuant to an enabling provision of the Constitution and there is not only a reasonable legislative construction of that provision but also approval of that construction by the people on referendum" (*Lundberg v. County of Alameda,* 46 Cal. 2d 644, 652, *appeal denied per curiam sub. nom., Heisey v. County of Alameda,* 352 U.S. 911 *1956).

By following its own interpretation of the application of Proposition 13, ostensibly without regard for legislative construction, this Court has implied that the Legislature, the Controller, the Attorney General, the State Board of Equalization, and eight State court judges acted unreasonably in seeking to apply Proposition 13 to the 1978-79 unsecured roll.

Apparently, this Court views as having no rational basis, and thus arbitrary, the position that Proposition 13 applies to the 1978-79 unsecured roll. The Board believes, however, that the California Legislature, executive branch, and lower State courts are possessed of such character and intelligence that it would be impossible to conclude that a common interpretation, as that reached by each of them independently, was arbitrary, resting on no rational basis.

To the contrary, the Board states that the actions of the Legislature, the executive branch, and the lower State courts in applying Proposition 13 to the 1978-79 unsecured roll were

rational and reasonable. Thus, the Board's position is that this Court overruled the action by the Legislature, the executive branch, and lower State courts not on a legal basis, but solely because this Court wished to achieve a different result.

> "It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes, or it might as well happen in every adjudication upon any single statute. *The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body.*" (The Federalist No. 78 (A. Hamilton)). (Emphasis added).

Several conclusions derive from the above analysis. First, this Court bases its decision on the ballot pamphlet's purported silence regarding Proposition 13's treatment of property on the 1978-79 unsecured roll. Such silence would conveniently support the result reached by this Court; however, the ballot pamphlet did speak to the effect of Proposition 13 on the property on the 1978-79 unsecured roll, and that fact cannot be ignored. (California Voters Pamphlet, Primary Election (June 6, 1978), p. 58). Second, this Court obviously takes exception to the conclusions reached by the California Legislature, the executive branch, and the lower State courts. Apparently this Court wished to substitute its own tax policy for that of the Legislature.

By denying business properties on the 1978-79 unsecured roll the tax benefits of Proposition 13, this Court fashioned its own "deep pocket" tax policy for this case. The best expression of a "deep pocket" tax policy comes from a dissent by Justice Mosk in a very recent property tax case. In that case, a local assessor completely abused the "clerical error" procedure in an attempt to impose an increased tax assessment on a large business taxpayer. While the majority opinion held that the

action of the assessor was illegal and, accordingly, held that the taxpayer was entitled to a refund, Justice Mosk dissented as follows:

> "At a time when local government is desparately in need of revenue, the majority disapprove the assessment of the County Assessor and the review thereof by the County Board of Supervisors, and improvidently award to the United States Borax and Chemical Corporation (Borax) a bountiful windfall of $294,033.61, plus interest. This sum must be paid out of county resources." *United States Borax & Chemical Corp. v. Mitchell,* 27 Cal.3d 84, 95 (1980).

Further, Justice Mosk continued:

> "Of equal importance to the foregoing statutory interpretation issue is the serious policy question in this case. Shall a giant mining industry escape its proper share of taxation, not only on the present basis but on figures running until the year 2003, on a mere technical error for the correction of which the statute was obviously designed?" (Id. at 98).

In any event, whatever this Court's reason for imposing the higher tax rate on property on the 1978-79 unsecured roll is immaterial. What is material is that this action by this Court amounted to a complete and total usurpation of the inherent power of taxation which rests with the California Legislature. Accordingly, the August 14, 1980 decision by this Court, imposing the higher tax rate on property on the 1978-79 unsecured roll, deprived the citizens of California of their constitutional guaranty to reside in a state with a republican form of government. (United States Const. Art. IV, Sec. 4 and Ament. X. See also *Brown v. Environmental Protection Agency,* 521 F.2d 827, 840 (9th Cir. 1975)).

The Board also contends that the tax imposed by this Court on the 1978-79 unsecured roll violates the due process clause of the Fourteenth Amendment to the United States

Constitution. *Nebbie v. People of State of New York,* 291 U.S. 502 (1933), established the principle that an economic regulation such as a taxing statute, violates the due process clause if it is "unreasonable, arbitrary, or capricious." See *West Coast Hotel Co. v. Parrish,* 300 U.S. 379 (1937); *Lincoln Federal Labor Un. v. Northwestern I. & M. Co.,* 355 U.S. 525 (1949); *Ferguson v. Skrupa,* 372 U.S. 726 (1963); *Exxon Corp. v. Governor of Maryland,* 437 U.S. 117 (1978).

Further, a taxing statute, such as Proposition 13, that has a reasonable legal basis and is neutral and nondiscriminatory on its face may be applied in such an arbitrary or capricious manner as to violate the due process clause of the Fourteenth Amendment. See *Moorman v. Bair,* 98 S. Ct. 2340, 2345, quoting with approval from *Underwood Typewriter Co. v. Chamberlain,* 254 U.S. 113, 121 (1920) (tax apportionment must not be "inherently arbitrary"); *Virgo Corporation v. Paiewonsky,* 384 F.2d 569, 582 (3d Cir. 1967) (imposed tax must not be "palpably arbitrary"); *Lafayette Steel Company v. City of Dearborn,* 360 F. Supp. 1127, 1131 (E.D. Mich. 1973) (due process requires that exercise of taxing power is "not arbitrary"). The erratic application of Proposition 13 by this Court and the resulting disparity in the treatment of real property owners and business personal property owners is clearly contrary to the due process clause of the Fourteenth Amendment.

The Board further contends that this Court's application of Proposition 13 to the 1978-79 secured roll but not the 1978-79 unsecured roll is so arbitrary and whimsical as to violate the equal protection clause of the Fourteenth Amendment. *Ohio Oil Co.,* 281 U.S. 146, 160 (1929); *F. S. Royster Guano Co. v. Virginia,* 253 U.S. 412, 416 (1920); *County of San Bernadino v. Way,* 18 Cal. 2d 647, 658 (1941); *Soares v. City of Santa Maria,* 38 Cal. App. 2d 215, 218 (1940). This contention is based on the previously stated grounds as well as those appearing on pages 262 through 272 of the Clerk's Transcript.

CONCLUSION

This Court deprived the citizens of California of fundamental Federal constitutional rights (i) by, in essence, imposing a tax rate on the 1978-79 unsecured roll in excess of the limitations of Proposition 13 and (ii) by refusing to recognize the valuation standard, Proposition 13, that the citizens of California intended to apply to the 1978-79 unsecured roll. Accordingly, the Board respectfully requests that this Court grant a rehearing in this case in order that these substantial constitutional issues may be considered.

Dated: August 29, 1980

Respectfully submitted,

ALYWARD & KINTZ

/s/ Peter G. Aylward

Appendix I

THE AMENDMENT

Article XIII A

Section 1.

(a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective.

Section 2.

(a) The full cash value means the county assessors valuation of real property as shown on the 1975-76 tax bill under "full cash value," or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 tax levels may be reassessed to reflect that valuation.

(b) The fair market value base may reflect from year to year the inflationary rate not to exceed two percent (2%) for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction.

Section 3.

From and after the effective date of this article, any changes in state taxes enacted for the purpose of increasing revenues collected pursuant thereto whether by increased rates or changes in methods of computation must be imposed by an

Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that no new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property may be imposed.

Section 4.

Cities, counties, and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such city, county, or special district.

Section 5.

This article shall take effect for the tax year beginning on July 1 following the passage of this Amendment, except Section 3 which shall become effective upon the passage of this article.

Section 6.

If any section, part, clause, or phase hereof is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected but will remain in full force and effect.

Appendix J

CALIFORNIA REVENUE AND TAXATION CODE

Sec. 2237. [Property tax levy prohibited except for interest and principal on general obligation bonds.] (a) Notwithstanding any other provision of law, except as provided in subdivision (b), no local agency, school district, county superintendent of schools, or community college district shall levy an ad valorem property tax, other than that amount which is equal to the amount needed to make annual payments for the interest and principal on general obligation bonds or other indebtedness approved by the voters prior to July 1, 1978 or the amount levied pursuant to Part 10 (commencing with Section 15000) of Division I and Sections 39308, 39311, 81338, and 81341 of the Education Code. In determining the tax rate required for the purposes specified in this subdivision, the amount of the levy shall be increased to compensate for any allocation and payment of tax revenues required pursuant to subdivision (b) of Section 33670 and subdivision (d) of Section 33675 of the Health and Safety Code.

(b) A county shall levy an ad valorem property tax on taxable assessed value at a rate equal to four dollars ($4) per one hundred dollars ($100) of assessed value. The revenue from such tax shall be distributed, subject to the allocation and payment as provided in subdivision (d) of Section 33675 of the Health and Safety Code, to local agencies, school districts, county superintendents of schools, and community college districts in accordance with the provisions of Section 26912 of the Government Code. (*As added by Ch. 292, Laws 1978, and amended and renumbered by Ch. 332, Laws 1978; Ch. 29, Laws 1979, effective April 5, 1979.*)

Appendix K

Article XIII, Section 2.

[Taxation of personal property]

The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction.

Adopted November 5, 1974.

Appendix L

Article XIII, Sec. 12

[Unsecured taxes]

(a) Except as provided in subdivision (b), taxes on personal property, possessory interests in land, and taxable improvements located on land exempt from taxation which are not a lien upon land sufficient in value to secure their payment shall be levied at the rates for the preceding tax year upon property of the same kind where the taxes were a lien upon land sufficient in value to secure their payment.

(b) In any year in which the assessment ratio is changed, the Legislature shall adjust the rate described in subdivision (a) to maintain equality between property on the secured and unsecured rolls.

Adopted November 5, 1974; Amended November 2, 1976.

No. 80962

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO,
Petitioner,

v.

GERALD J. LONERGAN, Auditor and Controller of the County of San Diego,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Does Article IV, Section 4 of the United States Constitution bar the California Supreme Court from determining the interpretation and interrelationship of property tax provisions of the California Constitution as they relate to the ministerial duties of County officers.

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GERALD J. LONERGAN, Auditor and Controller of the County of San Diego,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF RESPONDENT IN OPPOSITION

JURISDICTION

The jurisdiction of this Court is invoked by petitioner under 28 U.S.C. Section 1257(3).

Respondent challenges both the existence of a federal right in issue and the timely raising thereof as more fully set forth in the Argument below.

STATEMENT OF THE CASE

There were no factual issues in dispute in this case below. The action sought only to determine the nature and extent of the ministerial mandatory duties of the Auditor and Tax Collector with regard to computing, billing and collecting the unsecured property taxes for the 1978-79 tax year.

Taxable property in California is first divided between real property and personal property. All taxable property, whether real or personal, appears on the assessment roll. In preparing the assessment roll, the assessor classifies properties as either secured or unsecured. The secured portion of the assessment roll is that part of the roll containing property the taxes on which are a lien on the property sufficient in the opinion of the assessor to secure payment for the taxes and all other property is placed on the unsecured roll. Taxes on the unsecured roll are due on lien date, March 1, prior to commencement of the tax year and become delinquent normally on August 31. Unsecured taxes are frequently billed as soon as possible after the lien date and in almost all instances are billed prior to the adoption of the secured tax rates by various local government agencies on or before September 1. Therefore, the tax rate which is applied to property on the unsecured roll has historically been the secured tax rate from the prior year's secured roll. The use of the prior year's secured rate for the current year's unsecured roll is required by Article XIII, Section 12(a), of the California Constitution, and implementing legislation.

On June 6, 1978, Proposition 13 was adopted which added a new Article XIII A to the California Constitution, providing value limitations for real property and a maximum tax rate for such real property. Questions then arose as to the impact of

Article XIII A upon the historical practice of applying the prior year's secured tax rate to the unsecured roll. This controversy came about because the unsecured roll, while consisting primarily of personal property, also included various types of real property which were not deemed sufficient security for taxes so as to be placed on the secured roll.

The Auditor and Tax Collector announced their intent to comply with Article XIII, Section 12(a) of the Constitution by applying the prior year's secured rate to the unsecured roll for the 1978-79 tax year. The Board of Supervisors made a policy determination that the same or similar rates as applied to the secured roll should be applied to the unsecured roll for the 1978-79 tax year. Thus, the controversy was drawn.

The 58 counties throughout the state significantly split on this issue with 22 counties, including most of the larger counties following the mandate of Article XIII, Section 12(a) and the initial position of the State Attorney General as set forth in his official analysis of Proposition 13, issued on April 27, 1978.

After the election the State Attorney General reversed his position and filed an action in the California Supreme Court challenging the acts of the auditors and tax collectors in the 22 counties which had applied the prior year's secured tax rate to unsecured property for 1978, or indicated their intent to do so. (*Younger* v. *Alvord* [1978] Supreme Court No. LA 30996.) On August 16, 1978, the State Supreme Court denied the petition without comment. Thereafter, this action was commenced by the Board of Supervisors.

In most, though not all circumstances, the application of the 1977 secured rates to the 1978 unsecured roll resulted in a higher tax liability than the application of Proposition 13 tax rates be-

cause the maximum tax rate limitations provided by Article XIII A were in most cases less than the 1977 secured tax rates.

The trial court rendered its oral decision on September 11, 1978, concluding that the Auditor and Tax Collector were legally required to compute, bill and collect property taxes on the unsecured roll for 1978-79 in accordance with tax rate and valuation limitations determined pursuant to Article XIII A, Sections 1 and 2 of the California Constitution (Proposition 13) except for the partial application of Article XIII, Section 12, of the California Constitution for a debt service component on the unsecured roll. The Tax Collector and Auditor proceeded to compute, bill and collect taxes on the unsecured roll in accordance with the judgment pending a final determination of this litigation. Subsequently, on September 22, 1978, the California Supreme Court issued its Opinion in *Amador Valley Joint Union High School District* v. *State Board of Equalization* (1978) 22 Cal.3d 208, generally upholding the constitutionality of Article XIII A. Therein the Court specifically approved the exercise of judicial restraint in dealing prospectively with every provision of Article XIII A indicating that "adjudication of these matters must await an actual controversy, and should proceed on a case by case basis as the need arises." (*Amador, supra,* at 247.) The Court thus recognized that questions such as the unsecured rate would necessarily remain unresolved until addressed in a proper case of statewide application.

In view of the continuing statewide controversy and multiplicity of litigation on this issue, the Auditor then appealed the trial court decision to the State Court of Appeal, Fourth Appellate District, Division One. The Court of Appeal affirmed the judgment of the trial court on January 8, 1980, filed a modification of

its opinion on January 30, 1980, and denied a Petition for Rehearing on January 30, 1980.

On January 24, 1980, the Court of Appeal, Second Appellate District, Division 4, filed its decision in *Roy E. Hanson, Jr. Manufacturing* v. *County of Los Angeles, et al.,* 2 Civil No. 56036, a case in which the same issues were being litigated in a different appellate district. The Court in *Hanson* held that Article XIII, Section 12(a) was of no force and effect in that the controlling constitutional provision for the resolution of this issue was Article XIII, Section 12(b) which the Court construed as requiring absolute equality between secured and unsecured rolls, regardless of change in the secured roll debt levied from year to year. Thus, the Court in *Hanson* differed with the Court in *Board of Supervisors* v. *Lonergan* not only as the rationale for applying the 1% base levy to the unsecured roll, but also as to what debt service component should be added to the base levy to insure the payment of voter approved indebtedness.

Recognizing that the purpose of the San Diego litigation was to define the ministerial duties of county auditors and county tax collectors with regard to their role in computing and billing unsecured taxes, the conflict between the Court of Appeal decision in *Board of Supervisors* v. *Lonergan* and the Court of Appeal decision in *Hanson* v. *County of Los Angeles, et al.,* both of which had been certified for publication, cast considerable doubt on the proper method to undertake those ministerial duties.

The contradicting reasoning of the courts of appeal in *Board of Supervisors* v. *Lonergan,* and *Hanson* v. *County of Los Angeles* created Statewide conflict and lack of uniformity on an issue of importance to all taxing agencies and to all taxpayers and a hearing with the California Supreme Court was sought in

both cases. The Court accepted the cases for hearing and after careful consideration of all issues raised in both suits, rendered its decisions on August 14, 1980. (*Board of Supervisors* v. *Lonergan* [1980] 27 Cal.3d 855; *Hanson* v. *County of Los Angeles* [1980] 27 Cal.3d 870.) The unanimous decisions reversed both courts of appeal and applied a uniform and practical constitutional construction to define the ministerial duties of county officers, giving proper effect to all provisions of the State Constitution in issue. The State Supreme Court recognized that the historical equality of taxation between both rolls must be maintained with the one year lapse of applying secured rates to the subsequent unsecured roll. Thus unsecured taxpayers would receive the benefit of Proposition 13 commencing with tax year 1979-80 and all years thereafter, including the year following any repeal or modification of Proposition 13. Thereafter, in a Petition for Rehearing, the Board of Supervisors raised for the first time the alleged federal issue as to the guarantee clause; Article IV, Section 4 of the United States Constitution.

That Petition was denied without comment on September 17, 1980 by the California Supreme Court.

SUMMARY OF ARGUMENT

1. The alleged federal issue was not timely raised, being first discussed in a Petition for Rehearing in the California Supreme Court.

2. The decision below was based entirely on applicable state law and involved no federal issues.

3. The erroneous allegations of petitioner as to improper determination of facts below do not merit consideration by the United States Supreme Court.

4. The decision of the California Supreme Court and, more significantly, the exercise of its duty to resolve a proper case and controversy as to the interpretation of the State Constitution are fully consistent with a republican form of government.

ARGUMENT

1. THE PURPORTED FEDERAL ISSUE WAS NOT TIMELY RAISED.

While counsel for the Board of Supervisors did address an equal protection issue at time of trial, as noted by the California Supreme Court, that issue was abandoned on appeal. No other federal issues were raised below and the California Supreme Court made its decision fully upon non-federal grounds. Only in a Petition for Rehearing to the California Supreme Court was the "republican form of government" issue raised. That Petition was denied without comment. Generally the attempt to raise a federal question upon a Petition for Rehearing after judgment comes too late unless the Court actually entertains the question and decides it. (*Radio Station WOW* v. *Johnson* [1944] 326 U.S. 120, 128; *Hanson* v. *Denckla* [1958] 357, U.S. 235, 243-4; *Herndon* v. *Georgia* [1934] 295 U.S. 441, 443; *American Surety Co.* v. *Baldwin* [1932] 287 U.S. 156; *Forbes* v. *State Council* [1909] 216 U.S. 396.) In extraordinary circumstances a federal question may be timely raised in a Petition for Rehearing where the litigant is able to show that the decision of the state court was of such surprise that the federal issue could not have reasonably been anticipated from prior decisions. No such surprise existed in the instant case.

The interpretation of Article XIII A in conjunction with the other long standing provisions of the California Constitution

relative to property taxation had been a matter of considerable doubt as evidenced by the fact that there was almost an equal split among California counties as to what method should be utilized to establish a tax rate for the unsecured roll in 1978. Further the Attorney General of the State had vacillated on the issue and the State Supreme Court, in upholding the constitutionality of Proposition 13, had expressly reserved its judgment as to a multitude of interpretative issues which would of necessity have to arise on a case by case basis. The fact that the State Supreme Court granted the Petition for Hearing in this matter would necessarily result in the expectation that the Supreme Court could interpret the constitutional provisions in a manner different from the Court of Appeal. The fact that two Courts of Appeal in the State of California had interpreted the provisions in contrary manners further evidenced the uncertainty of the area of law. In addition prior decisions of the State Courts construed and interpreted the distinctions between unsecured and secured property in a manner consistent with the ultimate decision of the State Supreme Court in this case. (*Rode* v. *Siebe* [1898] 119 Cal. 518; *Abrams* v. *City and County of San Francisco* [1941] 48 Cal.App.2d 1.)

Thus though the unanimous decision of the California Supreme Court may have been a disappointment to the Board of Supervisors, it in no way could be construed to be of such a nature as to be a total surprise and unable to be anticipated. If the Board felt that such a result would do violence to the guarantees of the republican form of government, that objection easily could have been made before the California Supreme Court in the briefs or at oral argument. However, no such objection was made.

2. NO FEDERAL ISSUE NEED BE CONSIDERED

The California Court decision is based entirely upon the construction and interpretation of State constitutional provisions relating to property taxation and is fully adequate to support the judgment without consideration of any federal questions. Under such circumstances your Honorable Court should not grant a petition. (*Murdock* v. *Memphis* [1874] 20 Wall. 590, 636.)

3. THE COURT SHOULD NOT REVIEW THE ALLEGED ISSUES OF FACT

The Board asserts that the decision below is based upon erroneous findings of fact. It is well recognized that your Honorable Court should not assert its jurisdiction merely to review a decision of a State Court upon questions of fact absent extraordinary circumstances. (*Fry Roofing Co.* v. *Wood* [1952] 344 U.S. 157, 160; *United States* v. *Johnston* [1924] 268 U.S. 220, 227; *Grayson* v. *Harris* [1924] 267 U.S. 352, 358; *Portland R. Co.* v. *Railroad Commission* [1912] 229 U.S. 397, 412.) The decision below discusses at considerable length the issues of determination of voter intent raised by the parties and resolves those issues in a manner totally consistent with State law based clearly upon evidence within the record to support it. The determination of those factual issues concomitant with the interpretation of state taxing laws simply does not raise a substantial federal question necessitating review by the Supreme Court. The State Court's decision applies only to one tax year and only to a relatively small portion of the taxable property within the state for that year. It cannot be said to raise such a substantial issue even on a statewide basis much less on a nationwide basis as to justify examination of the factual record below.

4. THE DECISION BELOW IS FULLY CONSISTENT WITH THE GUARANTEE OF A REPUBLICAN FORM OF GOVERNMENT

The heart of the Board's claim goes to the assertion that the California Supreme Court's exercise of its judicial powers has "constituted a judicial usurpation of the taxing power," thus violating the principles of a republican form of government. The exact reverse is true. The decision of the State Court demonstrates unquestionably that California maintains a republican form of government. A republican form of government, as guaranteed by the Constitution of the United States, has been defined as one which derives all its powers directly or indirectly from the people and which is administered by persons holding their offices for a limited period or during good behavior. (*Cochran* v. *Louisiana State Board of Education* [1929] 281 U.S. 370; *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* [1929] 281 U.S. 74.) Where a state is in full possession of its powers as a member of the union and its legislative, executive and judicial departments are peacefully operating by the orderly and sole methods prescribed by fundamental law, it will be treated as continuing to enjoy a republican form of government notwithstanding that there may be difficulties and disturbances arising from pendency and determination of important litigation and election contests. (*Taylor* v. *Beckham* [1900] 178 U.S. 548.)

The judicial power of the State of California is vested in the Supreme Court and various inferior courts by the State Constitution (Article VI, Section 1). Under the American system of constitutional government among the most important functions entrusted to the judiciary is the interpreting of constitutions. (*Webster* v. *Cooper* [1852] 14 How. 488.) The judicial de-

partment of every government is a rightful expositor of its laws and emphatically of its supreme law. (*Bank of Hamilton* v. *Lessee of Dudley* [1829] 2 Pet. 492.)

After having commenced this litigation to seek a judicial interpretation of the State Constitution and now being dissatisfied with its ultimate result, the Board would attempt to do violence to the basic precepts of the separation of powers; incongruously arguing that the guarantee of a republican form of government prohibits the State Supreme Court from exercising its constitutional mandate to interpret and construe provisions of the California Constitution.

The exercise of its judicial duty to determine the interpretation and interrelationship of constitutional provisions by a state supreme court, vested with that responsibility by the state constitution itself, is mandated by the federal constitutional guarantee of a republican form of government. To so construe Article IV, Section 4 of the United States Constitution so as to bar a state supreme court from resolving such matters would necessarily deny the state of one of the most fundamental precepts of the republican form of government; that of an independent judiciary. Were courts not available to resolve conflicts such as this case below, the result would undoubtedly be anarchy.

While the nature of the controversy through the state court proceedings was clearly a proper justiciable issue as to the ministerial duties of county officers, the Petition to your Honorable Court challenging the duty and authority of the California Supreme Court is clearly a nonjusticiable political question. Whether the constitutional duties of the state courts are to be eliminated or curtailed is for the voters of California to decide. It is recognized that how the sovereign power shall be distributed

by a state among its governmental organs is commonly if not always a question for the state itself. (*Highland Farms Dairy, Inc.* v. *Agnew* [1936] 300 U.S. 608.) Each state has the right to order its own affairs and govern its own people except so far as the Federal Constitution expressly or by fair implication has withdrawn that power. (*Twining* v. *New Jersey* [1908] 211 U.S. 78.)

Under the California Constitution the State Supreme Court was clearly vested with the duty to resolve the issue and it did so in accordance with all applicable state precedents and rules of construction. While the Board's attempt to constrain the State Supreme Court may be viewed as perhaps one of the most unique attempts to relieve the overcrowding of our courts, the clear and unequivocal authority of the State Supreme Court to render a decision in a matter such as this rests not only in the California Constitution but also in the basic premise of the republican form of government itself.

As remarked by Chief Justice Taney in *Luther* v. *Borden* (1849) 7 How. 1, 46: "The high power has been conferred on this court of passing judgment upon the acts of the state sovereignties, and of the legislative and executive branches of the Federal government, and of determining whether they are beyond the limits of power marked out for them respectively by the Constitution of the United States. This tribunal, therefore, should be the last to overstep the boundaries which limit its own jurisdiction. And while it should always be ready to meet any question confided to it by the Constitution, it is equally its duty not to pass beyond its appropriate sphere of action, and to take care not to involve itself in discussions which properly belong to other forums."

Most recently, in a case challenging a decision of the Louisiana Supreme Court as being violative of the Guarantee Clause, the District Court held:

"The validity of a particular transaction under a state statute or constitution is, of course, simply a question of declaring the meaning of state law, and presents no federal question. The plaintiffs have not cited, and we have not found, a single authority for the proposition that an alleged incorrect interpretation of the meaning of state law by a state court presents a federal question. If that were true, the federal courts would have jurisdiction of all cases of statutory construction arising under state law, and there would be no such case that would not present a federal question.

"But plaintiffs further argue that the Louisiana Supreme Court's interpretation of its own Constitution deprives the voters of due process of law, and the guarantee of a republican form of government, under the Federal Constitution, apparently because that court's interpretation of the Louisiana Constitution is different than that of certain voters . . .

". . . Thus, the plaintiffs would have this Court, in the name of the Constitution of the United States, strike down a state court's interpretation of the meaning of its own Constitution, because plaintiffs and 21 deponents state that they disagree with that interpretation. The proposition we must thus decide is who is the authoritative voice in Louisiana in declaring the meaning of the state's law. Obviously, it is the Louisiana Supreme Court. We do not understand the other issues plaintiffs are attempting to raise. To repeat, plaintiffs have neither attacked the procedure by which the amendment was adopted (as unfair or illegal), nor the constitutionality of the amendment itself.

"The problem presented by this case is not a federal constitutional one. It is not for this Court to inquire into the wisdom or feasibility of the domed stadium project. Nor do we inquire into the interpretation of the Louisiana Constitutional Amendment involved since that has been fully passed on by the Louisiana Supreme Court which speaks with final authority on matters of Louisiana state law. In the area in which

we are involved, namely federal constitutional law, we find no support to plaintiffs' contentions, nor have we been cited any argument or authority which would afford relief to plaintiffs." (*Watermeier* v. *Louisiana Stadium and Exposition District,* D.C. La. [1969] 308 F.Supp. 273, affirmed 398 U.S. 955.) For the same reasons, the Petition herein should be denied.

CONCLUSION

Absent the existence and timely raising of a substantial federal issue there is no reason for your Honorable Court to exercise its jurisdiction. Further, the performance by a state supreme court of its proper mandated duties to construe and interpret state tax laws is fully consistent with the republican form of government. Petitioner's allegation of error is fundamentally contrary both to the basic doctrine of separation of powers and a republican form of government. Therefore, the Petition should be denied.

DATED: January 12, 1981

Respectfully submitted,

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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

BOARD OF SUPERVISORS OF THE COUNTY OF SAN DIEGO,

Petitioner,

vs.

GERALD J. LONERGAN, AUDITOR AND CONTROLLER OF THE COUNTY OF SAN DIEGO AND JAMES E. JONES, TREASURER-TAX COLLECTOR OF THE COUNTY OF SAN DIEGO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR IMPERIAL METALS CO., INC. AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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BRIEF FOR IMPERIAL METALS CO., INC. AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

INTEREST OF AMICUS CURIAE

Imperial Metals Co., Inc., is a California corporation engaged in business as a steel products importer and distributor. For the 1978-79 tax year Amicus paid ad valorem property taxes in

excess of $600,000 on its business inventories located in California. (This figure includes taxes on inventories of affiliated companies, as well as of third parties which Amicus was contractually obligated to pay.) None of these inventories were located on real property owned by Amicus.

Had Amicus owned real property in the counties where such inventories were located (Los Angeles and Alameda Counties), Amicus would have paid a total tax of approximately $200,000.00. Such differential was based solely on the fact that Amicus did not own real property in those counties. Many of Amicus' competitors owned the real property on which their inventories were located. Such competitors paid ad valorem property tax for the 1978-79 tax year, on inventories substantially similar to those of Amicus, at a rate approximately one-third that applied to Amicus.

Amicus has a substantial interest in the outcome of the litigation between the San Diego Board of Supervisors and the Auditor-Controller and Treasurer-Tax Collector of San Diego.

Pursuant to Rule 36, Amicus Curiae has obtained from the parties herein consents to the filing of a brief as amicus curiae, which consents are attached hereto as Appendices A and B.

STATEMENT OF THE CASE

Central to the instant controversy is the distinction between the "secured" and "unsecured" portions of the property tax roll. Since the inception of the California property tax in 1850, both real and personal property have been subject to taxation.[1] The State Legislature, however, concerned over the mobility of personal property and the danger that such property might escape taxation during the interval between assessment and collection, in 1857 passed a measure requiring the tax collector to demand and collect shortly after assessment taxes with respect to personal property owned by persons and corporations not owning any real estate in the county.[2] There thus evolved the notion of a "secured" and an "unsecured" property tax roll. The secured roll consisted of real property and of personal property owned by taxpayers who also owned some real property in the county -- in other words, taxpayers who were subject to a lien on their real property for payment of taxes. The unsecured roll consisted of all other property, i.e., personal property owned by taxpayers who owned no real property in the county.[3] Over the years, the composition of the secured and unsecured rolls has gone through modest modifications (most

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[1]Cal. Stats. 1850 ch. 52 §2.

[2]Cal. Stats. 1857 ch. 261 §9.

[3]See Rode v. Seibe, 119 Cal. 518, 520, 51 P. 869 (1898).

notably by inclusion on the unsecured roll of leasehold and other possessory interests of private parties in tax-exempt real estate), but the basic distinction between the rolls remains unchanged.[4] Today, property tax bills with respect to unsecured roll property (which are normally sent out in June) must be paid by August 31.[5]

Since unsecured property tax bills were prepared and sent before adoption by the County Board of Supervisors of the final budget, and before setting of the current year's tax rate, the California Legislature in 1872 authorized use of the prior year's tax rate for purposes of sending provisional unsecured roll tax bills. Once the exact tax rate for the current year became known, however, the county treasurer was required to refund any excess over the true rate of tax which had been collected, and, if less than the true rate had been collected, the county assessor could levy an escaped assessment to collect the difference.[6]

Such routine refunds and escaped assessments generated administrative expense and inconvenience

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[4]See opinion of the California Supreme Court below, 167 Cal.Rptr. at 822-823.

[5]Cal. Rev. & Tax. Code §2922(a).

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[6]See Abrams v. San Francisco, 48 Cal.App.2d 1, 3-4, 119 P.2d 197 (Cal.Ct.App. 1941); Cal. Pol. Code §§3820, 3824 (1872).

all out of proportion to the small dollar amounts of adjustments involved.[7] To remedy this

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[7]See Abrams v. San Francisco, supra, 48 Cal. App. 2d at 7:

> "[W]henever any change was made in the tax rate, the county authorities would be put to the needless trouble of either refunding the excess taxes collected, or collecting the resulting deficiency with the countless computations which these processes would entail. Usually the sums involved were so small (as illustrated by the comparatively small demands in these 736 causes of action) as not to justify the effort or expense. . . ."

In Abrams the 1932-33 rate (for San Francisco County) was $3.96 per 100 of assessed valuation, while the 1933-34 rate was $3.48 per $100. Using today's assessment ratio of 25% of full cash value, such rates would have amounted to .0099 and .0087, respectively, of full cash value. See also Delaney v. Lowery, 25 Cal.2d 561, 567, 154 P.2d 674 (1944).

To give a further example of the minute size of the differential under Art. XIII §12, for the 1976-77 fiscal year in Los Angeles County, the difference between the secured and unsecured roll rates for a typical taxpayer amounted to less than 2 cents per $100 of market value. For the 1977-78 fiscal year the difference was less than 6 cents per $100 of market value.

administratively burdensome situation, California adopted in 1924 what is now Article XIII, §12 of the California Constitution, which permitted the counties to assess and collect tax on unsecured roll property using the rate for the prior year's unsecured roll, without further adjustment upon the setting of the current year's rate. Expressly relying on the administrative convenience rationale and on the lack of materiality of the annual rate differentials, a California appellate court upheld this provision in Abrams v. San Francisco, 48 Cal. App. 2d 1, 7, 119 P. 2d 197 (Cal. Ct. App. 1941).

On June 6, 1978, the California voters by initiative measure enacted Article XIIIA of the California Constitution (Proposition 13). It expressly limits ad valorem taxation of real property to a rate of 1% of full cash value plus a small additional rate (now approximating .25% of full cash value) to service pre-existing (i.e., pre-July 1978) taxpayer-approved indebtedness. California Constitution Article XIII, §2, limits the tax rate on personal property to the rate applied to real property. The California Voter's Pamphlet accordingly informed California voters that Proposition 13's reduced rate limitation would apply to all taxable property (whether real or personal).[8] It is uncontested that Proposition 13's reduced rate applies to both: (1) all

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[8]The Voters Pamphlet is an official explanation of, inter alia, initiative measures, which is required to be sent to all registered voters within 40 days of an election. Cal. Elect. Code §§3572, 3578.

property on the secured and unsecured rolls for tax years after 1978-79; and (2) all personal property on the secured roll for tax year 1978-79 (which began July 1, 1978). Indeed, Respondents without contest taxed the two categories of property just described at Proposition 13's reduced rate.

At issue herein is the tax rate for property on the unsecured roll for 1978-79. Respondent (relying on Article XIII, §12) taxed such property at the much higher tax rate used the preceding year, despite opinions by the California Attorney General, the State Board of Equalization, and State Controller that Article XIIIA's reduced rate applied to unsecured roll property for 1978-79.[9] The provision relied upon by Respondent was, however, merely for administrative convenience so that small adjustments would not have to be made from year to year. It was not intended to create (nor prior to the 1978-79 tax year, did it create) material tax rate differentials, let alone differentials amounting to 300%.

Amicus in the instant case owned on the tax lien date for the 1978-79 tax year substantial inventories of steel. These inventories were either on real property not owned by the taxpayer or were in the possession of third parties pending delivery. The total value of personal

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[9] Opns. Cal. Atty. Gen. CV 78-76 (June 26, 1978); Board of Supervisors v. Lonergan, 100 Cal. App. 3d 841, 849 (Cal. Ct. App. 1980), rev'd. 27 Cal. 3d 855, 167 Cal. Rptr. 820 (1980).

property on which Amicus paid taxes amounted to approximately $27,000,000. Taxpayer was assessed and paid taxes of approximately $625,000. Had Amicus owned real property in Los Angeles and Alameda Counties (and hence been afforded the benefits of Proposition 13) its taxes would have been approximately $220,000 on the same personal property.

QUESTIONS PRESENTED

Whether the California Supreme Court's decision interpreting Article XIIIA of the California Constitution so as to impose a tax burden on non-real property owners approximately three times as great as that imposed on real property owners with respect to identical personal property violates the Equal Protection Clause of the United States Constitution.

Whether the decision reached by the California Supreme Court in interpreting Article XIIIA of the California Constitution is so arbitrary and capricious as to constitute a denial of due process.

SUMMARY OF ARGUMENT

The decision of the California Supreme Court irrationally and unconstitutionally discriminates against taxpayers not owning real property in the county where they have personal property because it subjects them to tax rates and burdens two to three times as great as those for real property

owners, without any legitimate state interest served by the creation of such disparity. The lack of a legitimate state interest is underscored by the fact that neither the voters nor the Legislature have ever entertained any policy to have non-real property owners bear a greater tax burden than real property owners.

The treatment afforded non-real property owners by the decision of the Court below is so arbitrary, capricious, and irrational as to deny them of their property without due process of law.

ARGUMENT

I. THE ACTION OF THE CALIFORNIA SUPREME COURT IN DENYING THE BENEFITS OF PROPOSITION 13 TO TAXPAYERS WITH PROPERTY ON THE UNSECURED ROLL FOR THE 1978-79 TAX YEAR VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

A. DIFFERENCES IN TREATMENT OF TAXPAYERS MUST BE RATIONALLY CALCULATED TO ACHIEVE A LEGITIMATE STATE PURPOSE, AND MUST NOT BE ARBITRARY.

In cases not involving matters judicially designated as suspect classifications or

fundamental rights, this Court has articulated the test for determining violations of the Equal Protection Clause as follows: state classifications must be rationally related to a legitimate state interest. City of New Orleans v. Dukes, 427 U.S. 297, 309 (1976). The classification used must bear some reasonable relevance to the purpose for which it is created. Absent such relevance, discriminatory schemes will be struck down. Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U.S. 459, 462 (1937).

Classifications made in state tax measures "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation" [emphasis added], and must not be "illusory." F. S. Royster Guano Company v. Virginia, 253 U.S. 412, 415 (1920). See also Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527 (1959).

Interpretation and enforcement of facially valid taxing measures must also meet the rational relation/legitimate state interest test. Thus it was held unconstitutional for a county assessor to value one taxpayer's bridge at full market value, while other valuations in the county were between 49.29% and 55.70% of market value. Sioux City Bridge Company v. Dakota County, 260 U.S. 441 (1922).

B. THE CALIFORNIA SUPREME COURT'S DECISION IS ARBITRARY, FURTHERS NO LEGITIMATE STATE INTEREST, AND UNCONSTITUTIONALLY DISCRIMINATES AGAINST NON-REAL PROPERTY OWNERS.

For the 1978-79 fiscal year, Amicus paid property tax on its business inventories three times as great as it would have paid on the same inventories had it owned real estate in the two counties in question. This is not a case where a different rate of taxation is imposed on one class of property -- say, personal property -- because of its differences with another class -- say, real property. Rather, the decision below establishes one rate of taxation for personal property when owned by real property owners, and a much higher rate of taxation for identical personal property when owned by non-real property owners. Personal property on the unsecured roll identical to that on the secured roll has been taxed at triple the Proposition 13 rate solely because of the identity of the owner. This discrimination is arbitrary, unfair, and furthers no policy -- legitimate or otherwise -- ever intended by the voters or the Legislature.

In F. S. Royster Guano Company v. Commonwealth of Virginia, 253 U.S. 412 (1920), the taxpayer, a Virginia corporation with business operations both inside and outside that state, attacked on equal protection grounds a pair of revenue measures which had the effect of taxing

both in-state and out-of-state income of a corporation operating in both places, while completely exempting from taxation Virginia corporations whose only operations were outside the state. In holding the Virginia scheme a violation of the Equal Protection Clause, this Court found that, while it was rational to exempt corporations with no business in Virginia, it was not rational to exclude from this exemption the out-of-state operations of a Virginia corporation with in-state business. In so holding, the Court made the following observations:

> "[A] discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appears to be altogether illusory.
>
> * * *
>
> "It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect; and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design." [emphasis added] 253 U.S. at 415-416.

Thus an irrational or arbitrary tax result is no less unconstitutional because it is inadvertent.

An even more apposite decision is Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389 (1928).

Pennsylvania imposed an .8% gross receipts tax on all corporations engaged in the taxicab business. Taxicab operators organized as sole proprietorships or partnerships, however, were not subject to any such tax. Despite the differences between these forms of business organizations, widely recognized for other purposes of the law, this Court held that the distinction in this context was arbitrary and not reasonably related to the subject of the legislation. The Court made the following comments, which are applicable to the result reached by the California Supreme Court in the instant case:

> "In effect §23 divides those operating taxicabs into two classes. The gross receipts of incorporated operators are taxed while those of natural persons and partnerships carrying on the same business are not. The character of the owner is the sole fact on which the distinction and discrimination are made to depend. The tax is imposed merely because the owner is a corporation. The discrimination is not justified by any difference in the source of the receipts or in the situation or character of the property employed. It follows that the section fails to meet the requirement that a classification to be consistent with the equal protection clause must be based on a real and substantial difference having reasonable relation to the subject of the legislation. [citation omitted] No decision of this Court gives support to such a classification. In no view can it be held to have

more than an arbitrary basis. As construed and applied by the state court in this case, the section violates the equal protection clause of the Fourteenth Amendment." [Emphasis added] 277 U.S. at 402.

Just as the gross receipts tax in Quaker City Cab depended for its application on the identity of the owner of the taxicab business, so the application of Article XIIIA by the California Supreme Court below imposes a 300% differential in tax based solely on identity of the owner of the taxed property, i.e., based on his status as an owner or non-owner of real property in the County.

Whatever constitutional vitality the secured versus unsecured roll distinction might enjoy in the context of setting the time for collection of property taxes, there is no rational justification for imposing a materially heavier property tax rate on the unsecured roll -- the composition of which is determined solely according to whether the owners of such property also own real estate. This is an application of the concept that classifications valid in one context may be repugnant to the Equal Protection Clause in another. See Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U.S. 459, 463 (1937), where this Court said:

"It is idle to elaborate the differences between mutual and stock companies. These are manifest and admitted. But the statutory discrimination has no reasonable relation to these

differences. We can discover no reasonable basis for permitting mutual insurance companies to act through salaried resident employees and exclude stock companies from the same privilege."

Real property ownership is not a rational basis for creating material differences in tax rates on personal property. Furthermore, such a distinction tends to discriminate against new businesses, smaller businesses, and businesses based primarily out of state, all of which are less likely to own a fee interest in their business premises than older, wealthier, and more established businesses. In Kramer v. Union Free School District, 395 U.S. 621 (1969), this Court held unconstitutional a New York statute which limited the right to vote in school district elections to owners and lessees of taxable real property and parents of children enrolled in public schools. One of the Court's objections to the statute was that it arbitrarily discriminated against adults living in their parents' or children's homes, military personnel, inhabitants of government-owned property, and clergymen, among others. Similarly, in Cipriano v. City of Houma, 395 U.S. 701 (1969), this Court struck down a Louisiana law limiting voting in municipal utility bond elections to property owners.

The massive tax differential created by the decision of the court below does not rationally further any legitimate state end. Indeed, neither the California voters nor the state legislature ever entertained a policy goal to impose heavier taxes on unsecured property than on secured property.

It is beyond cavil that the only legislative on public policy purpose for the bifurcated tax rate structure in effect prior to adoption of Article XIIIA was to avoid the administrative inconvenience of assessing unsecured roll taxes at a provisional rate and later making numerous minor adjustments to reflect the true rate.[10] None of the parties herein have even contended (nor could they credibly) that the California Legislature or voters ever intended by Article XIII, §12 of the California Constitution to impose a materially heavier tax burden on unsecured property than on secured property. Board of Supervisors v. Lonergan, 100 Cal. App. 3d 841, 845-846 (Cal. Ct. App. 1980), rev'd. 27 Cal. 3d 855, 867 (1980). Indeed every expression of legislative intent available shows that the Legislature

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[10] See Delaney v. Lowery, 25 Cal. 2d 561, 567, 571, 572, 154 P. 2d 674 (1944):

> "The purpose of the adoption of section 9a [now Cal. Const. Art. XIII, §12(a)] in 1924 authorizing the use of the tax rate for the prior year for unsecured taxes on personal property which was extended to possessory interests in land by the 1936 amendment, was to avoid the necessity of refunds and supplemental assessments arising because such unsecured taxes were collected before the current rate was fixed and were computed tentatively on the rate for the prior year, and to avoid any claim of unconstitutional lack of uniformity in the rate.

and voters intended to keep tax burdens substantially equal between the secured and unsecured rolls.[11]

Even the California Supreme Court does not contend that the voters or Legislature affirmatively intended in enacting Proposition 13 and its enabling legislation, to saddle non-real property owners with taxes three times greater than those on real property owners. Rather, the Court below merely found an absence of "any convincing evidence of the voters' intent" on the issue and then fell back on "the presumption against implied repeals" [i.e., repeal of Article XIII, §12(a)] to hold that Proposition 13's reduced rate did not apply to the 1978-79 unsecured roll. The point made here is that the voters (and certainly the

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[11]Cal. Const. Art. XIII, §12(b), requires the Legislature to adjust the prior year's tax rate as it applies to unsecured property in any year in which the assessment ratio is changed, in order to maintain equality between property on the secured and unsecured rolls. Cal. Const. Art. XIII, §2 (enacted many years after the enactment of what is now Cal. Const. Art. XIII, §12(a)) requires that the "tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." Finally, Cal. Rev. & Tax. Code §2237, effective June 24, 1978, prohibits local governments from levying a tax on any property at a rate in excess of Proposition 13's reduced rate. As to the intent of the voters, see footnote 8, supra.

Legislature) never sought to achieve any state interest -- let alone a legitimate one -- by taxing personal property of unsecured roll taxpayers three times as heavily as personal property of real property owners. In any event, it would defy common sense to argue (as no one indeed has) that the voters affirmative entertained such an intent, but only as to one fiscal year. Thus, even if one accepts the California Supreme Court's strained interpretation of Article XIIIA, all one is left with is an inadvertent grossly discriminatory tax -- one which, according to this Court's decision in Royster Guano -- is no less constitutionally objectionable than deliberate arbitrary discrimination.

In summary, the question before this Court is whether a state court may constitutionally interpret and apply a state tax measure so as to impose a rate three times as high on non-real property owners vis-a-vis real property owners, with respect to exactly the same kind of property.

II. THE DECISION BELOW IS ARBITRARY AND CAPRICIOUS AND IGNORES THE CLEAR LANGUAGE AND INTENT OF PROPOSITION 13 AND ITS ENABLING LEGISLATION, THEREBY DEPRIVING UNSECURED ROLL TAXPAYERS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW, IN VIOLATION OF THE FOURTEENTH AMENDMENT.

Economic regulation, including taxation, which is palpably arbitrary or capricious

(including arbitrary tax administration) is repugnant to the Due Process Clause of the Fourteenth Amendment. West Coast Hotel v. Parrish, 300 U.S. 379, 399 (1936); Weissinger v. Boswell, 330 F.Supp. 615, 622 (D.C. M.D. Ala. 1971). The court in Weissinger found violative of due process the ad valorem tax system in Alabama whereby property was assessed at varying percentages of fair market value ranging from 9.7% to 26.8%, and where the court was unable to find "any legitimate state objective to be served by the vast disparity." 330 F.Supp. at 624. Similarly, in McCarthy v. Jones, 449 F.Supp. 480, 484 (1978), the court found unconstitutional under the Fourteenth Amendment an Alabama statute providing for assessment of taxes on property at different percentages of market value in different counties, the court finding "no legitimate state objective" behind the measure.

The holding of the California Supreme Court is similarly arbitrary in that it taxes identical personal property at rate differentials of 300% based solely on whether the owner of such property also owns real property in the county. This is at least as arbitrary and irrational a discrimination at that present in Weissinger v. Boswell and McCarthy v. Jones, supra.

Furthermore, as discussed above, the California Legislature never intended, under the pre-Proposition 13 bifurcated tax rate system, to have property on the unsecured roll bear a heavier tax burden than property on the secured roll. Indeed, after passage of Proposition 13 the Legislature acted promptly to insure maintenance

of equality between the rolls.[12]

This lack of legislative or voter purpose behind so drastic a discrimination further underscores the arbitrariness of the California Supreme Court's decision below.

CONCLUSION

For the reasons discussed above, certiorari should be granted and the decision of the California Supreme Court below should be reversed.

Respectfully submitted,

GERALD T. MANPEARL

Attorney for Amicus Curiae
Imperial Metals Co.

EVANS, MANPEARL & HARTER
AND
GLENN L. MADERE

Of Counsel

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[12] See footnote 11, supra.

APPENDIX A

October 31, 1980

Gerald T. Manpearl, Esq.
Evans, Manpearl & Harter
350 So. Figueroa St., Suite 900
Los Angeles, California 90071

RE: Board of Supervisors of San Diego v. Gerald J. Lonergan, et al.

Dear Mr. Manpearl:

This will confirm that we have no objection and consent to your filing an Amicus Brief and/or Amicus Petition for Certiorari on behalf of the Board of Supervisors of the County of San Diego.

AYLWARD & KINTZ

/s/ Peter G. Aylward

By: Peter G. Aylward
Attorneys for the Board of Supervisors of the County of San Diego

APPENDIX B

COUNTY OF SAN DIEGO
OFFICE OF
COUNTY COUNSEL

355 County Administration Center
San Diego, California 92101
(714) 236-3651

November 20, 1980

Gerald T. Manpearl, Esq.
Evans, Manpearl & Harter
350 So. Figueroa Street, Suite 900
Los Angeles, CA 90071

Dear Mr. Manpearl:

Re: Board of Supervisors of County of San Diego v. Gerald J. Lonergan, et al
Supreme Court, L.A. No. 31244

This will confirm that we consent to your filing an Amicus Brief in support of a Petition for Certiorari to the United States Supreme Court to be filed on behalf of the Board of Supervisors of the County of San Diego by Peter Aylward.

Very truly yours,

DONALD L. CLARK,
County Counsel

By /s/ Jack Limber
JACK LIMBER, Deputy

JL:bf
cc: Peter Aylward, Esq.











